
United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILHELM WILHELMSSEN,
Libelant and Appellee,

v.

THE BARK "THIELBEK,"
Knohr & Burchard, Nfl.,
Claimants and Appellees,

THE PORT OF PORTLAND,
Respondent and Appellant.

No. 6111

KNOHR & BURCHARD, Nfl.,
Libelant and Appellee,

v.

THE "THODE FAGELUND,"
Wilhelm Wilhelmsen,
Claimant and Appellant,

THE PORT OF PORTLAND,
Respondent and Appellant.

No. 6116

APOSTLES ON APPEAL

From the District Court of the United States
for the District of Oregon


VOLUME I.

Pages 1 to 736 inclusive

Filed

MAR 29 1916

F. D. Monckton,
Clerk.



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

No.

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

| | | |
|--|---|----------|
| WILHELM WILHELMSSEN, <i>Libelant and Appellee,</i> | } | No. 6111 |
| <i>v.</i> | | |
| THE BARK "THIELBEK," Knohr & Burchard, Nfl., <i>Claimants and Appellees,</i> | | |
| THE PORT OF PORTLAND, <i>Respondent and Appellant.</i> | | |

| | | |
|--|---|----------|
| KNOHR & BURCHARD, Nfl., <i>Libelant and Appellee,</i> | } | No. 6116 |
| <i>v.</i> | | |
| THE "THODE FAGELUND," Wilhelm Wilhelmsen, <i>Claimant and Appellant,</i> | | |
| THE PORT OF PORTLAND, <i>Respondent and Appellant.</i> | | |

APOSTLES ON APPEAL

From the District Court of the United States
for the District of Oregon

VOLUME I.
Pages 1 to 736 inclusive

INDEX.

| | Page |
|---|------|
| Additional Assignment of Errors on Appeal of Wilhelm Wilhelmsen (6116) | 281 |
| Amendments to Libel of Wilhelm Wilhelmsen, Motion of The Port of Portland to Disal- low (6111) | 99 |
| Amendments to Libel of Wilhelm Wilhelmsen, Objections of The Port of Portland to (6111) | 99 |
| Amendments to Answer of The Port of Port- land, Objections of Wilhelm Wilhelmsen to (6111) | 114 |
| Amendments to Libel, Opinion on Objections of The Port of Portland to (6111) | 104 |
| Amendments to Answer of The Port of Port- land, Opinion on Objections of Wilhelm Wilhelmsen to (6111) | 116 |
| Amendments to Answer of The Port of Port- land, Order Denying Motion of Wilhelm Wilhelmsen to Strike Out (6111) | 118 |
| Amount of Damages, Stipulation as to (6111) .. | 147 |
| Answer of Knohr & Burchard to Libel (6111) .. | 32 |
| Answer of Wilhelm Wilhelmsen to Libel (6116) | 175 |
| Answer of Knohr & Burchard to Interroga- tories (6116) | 196 |
| Answer of The Port of Portland to Libel of Wilhelm Wilhelmsen (6111) | 40 |
| Answer of The Port of Portland to Libel of Knohr & Burchard (6116) | 201 |

| INDEX. | Page |
|---|------|
| Answer of The Port of Portland, Exceptions of Wilhelm Wilhelmsen to (6111) | 74 |
| Answer of The Port of Portland, Exceptions of Knohr & Burchard to (6116) | 226 |
| Answer of The Port of Portland, Motion to Amend (6111) | 107 |
| Answer of The Port of Portland, Objections of Wilhelm Wilhelmsen to Amendments to (6111) | 114 |
| Answer of The Port of Portland, Opinion on Exceptions to | 80 |
| Answer of The Port of Portland, Opinion on Objections of Wilhelm Wilhelmsen to Amendments to (6111) | 116 |
| Answer of The Port of Portland, Order Allow- ing to Amend (6111) | 111 |
| Answer of The Port of Portland, Order Denying Motion of Wilhelm Wilhelmsen to Strike Out Amendments to (6111) | 118 |
| Answer of The Port of Portland, Order Sustain- ing Exceptions of Wilhelm Wilhelmsen to (6111) | 84 |
| Answer of The Port of Portland, Order Sustain- ing Exceptions of Knohr & Burchard to (6116) | 229 |
| Apostles on Appeal, Clerk's Certificate to..... | 1428 |
| Apostles on Appeal, Stipulation as to (6111)... | 148 |
| Apostles on Appeal, Stipulation as to (6116) .. | 277 |
| Appeal of The Port of Portland, Assignment of Errors on (6111) | 131 |

INDEX.

Page

| | |
|--|------|
| Appeal of The Port of Portland, Assignment of Errors on (6116) | 257 |
| Appeal of Wilhelm Wilhelmsen, Additional Assignment of Errors on (6116) | 281 |
| Appeal of Wilhelm Wilhelmsen, Assignment of Errors on (6116) | 264 |
| Appeal, Notice of The Port of Portland of (6111) | 129 |
| Appeal, Notice of The Port of Portland of (6116) | 254 |
| Appeal, Notice of Wilhelm Wilhelmsen of (6116) | 262 |
| Appeal, Order Consolidating Causes for (6111-6116) | 128 |
| Appeal of Wilhelm Wilhelmsen, Order Fixing Amount of Bond on (6116) | 261 |
| Appeal, Stipulation as to Apostles on (6111) .. | 148 |
| Appeal, Stipulation as to Apostles on (6116) .. | 277 |
| Assignment of Errors on Appeal of The Port of Portland (6111) | 131 |
| Assignment of Errors on Appeal of The Port of Portland (6116) | 257 |
| Assignment of Errors on Appeal of Wilhelm Wilhelmsen (6116) | 264 |
| Assignment of Errors, Additional, On Appeal of Wilhelm Wilhelmsen (6116) | 281 |
| Bond on Appeal of Wilhelm Wilhelmsen, Order Fixing Amount of (6116) | 261 |
| Caption | 1 |
| Clerk's Certificate to Apostles on Appeal..... | 1428 |

| INDEX. | Page |
|--|------|
| Cost Bill of Wilhelm Wilhelmsen (6111) | 137 |
| Cost Bill of Wilhelm Wilhelmsen, Objections of The Port of Portland to (6111) | 140 |
| Cost Bill of Wilhelm Wilhelmsen, Opinion on Objections of The Port of Portland to (6111) | 145 |
| Cost Bill of Wilhelm Wilhelmsen, Order Sus- taining Objections of The Port of Portland to (6111) | 146 |
| Damages, Stipulation as to Amount of (6111) . | 147 |
| Decree, Final for Knohr & Burchard (6111) . . . | 136 |
| Decree, Final on Libel of Knohr & Burchard (6116) | 246 |
| Decree, Final for Wilhelm Wilhelmsen (6111) . | 125 |
| Decree, Interlocutory on Libel of Knohr & Burchard (6116) | 233 |
| Decree, Motion of The Port of Portland for (6111) | 99 |
| Decree, Motion of Wilhelm Wilhelmsen to Set Aside (6116) | 248 |
| Decree, Objections of Wilhelm Wilhelmsen to Form of (6116) | 230 |
| Decree, Objections of Wilhelm Wilhelmsen to Form of (6116) | 239 |
| Decree, Objections of Wilhelm Wilhelmsen to Form of (6116) | 242 |
| Decree, Order Denying Motion of Wilhelm Wil- helmsen to Set Aside (6116) | 261 |
| Exceptions of Wilhelm Wilhelmsen to Answer of The Port of Portland (6111) | 74 |

| INDEX. | Page |
|---|-----------|
| Exceptions of Knohr & Burchard to Answer of The Port of Portland (6116) | 226 |
| Exceptions to Answer of The Port of Portland, Opinion on (6111-6116) | 80 |
| Exceptions to Answer of The Port of Portland, Opinion on in Cause No. 6129 | 291 |
| Exceptions of Wilhelm Wilhelmsen, Order Sus- taining to Answer of The Port of Portland (6111) | 84 |
| Exceptions of Knohr & Burchard, Order Sus- taining to Answer of The Port of Portland (6116) | 229 |
| EXHIBITS: | |
| Libelant's Exhibit 16 (A. W. P.) | 552-1420 |
| Libelant's (Wilhelmsen) Exhibit 1, Turppa | 724-1416 |
| Libelant's (Wilhelmsen) Exhibit 4, Nolan | 828-1417 |
| Libelant's (Wilhelmsen) Exhibit 5, Nolan | 828-1418 |
| Libelant's (Wilhelmsen) Exhibit 6, Nolan | 828-1419 |
| Libelant's (Wilhelmsen) Exhibit 7, Nolan | 831-1420 |
| Libelant's (Wilhelmsen) Exhibit 10, Campion | 1009-1010 |
| Libelant's (Wilhelmsen) Exhibit 11, Campion | 1044-1142 |
| Libelant's (Wilhelmsen) Exhibit 12, Campion | 1058 |

INDEX.

Page

Exhibits—Continued.

| | |
|---|-----------|
| Libelant's (Wilhelmsen) Exhibit 13, Campion | 1071 |
| Libelant's (Wilhelmsen) Exhibit 14, Pease, Jr. | 1133-1421 |
| Libelant's (Wilhelmsen) Exhibit 15, Pease | 1147 |
| Exhibit, License of Capt. Pease..... | 1174 |
| Thielbek Log (Knohr & Burchard Exhibit) | 978 |
| Claimant's Exhibit No. 2 (A. W. P. 6111) | 530-1423 |
| Knohr & Burchard Exhibit 1, (Capt. Turppa) | 747-1424 |
| Knohr & Burchard Exhibit 5..... | 1200-1425 |
| Knohr & Burchard Exhibit 7..... | 1205-1426 |
| Port of Portland Exhibit 1 (Nolan)... | 896- 898 |
| Port of Portland Exhibit 2 (Nolan)... | 897-1427 |
| Port of Portland Exhibit 5 (Pease)... | 1156 |
| Port of Portland Exhibit 6..... | 1411 |
| Final Decree on Libel of Wilhelm Wilhelmsen (6111) | 125 |
| Final Decree for Knohr & Burchard (6111)... | 136 |
| Final Decree on Libel of Knohr & Burchard (6116) | 246 |
| Final Decree, Motion of Knohr & Burchard for (6111) | 135 |
| Form of Decree, Objections of Wilhelm Wil- helmsen to (6116) | 230 |
| Form of Decree, Objections of Wilhelm Wil- helmsen to (6116) | 239 |

| INDEX. | Page |
|---|------|
| Form of Decree, Objections of Wilhelm Wilhelmsen to (6116) | 242 |
| Interlocutory Decree on Libel of Knohr & Burchard (6116) | 233 |
| Interrogatories Annexed to Answer of Wilhelm Wilhelmsen (6116) | 188 |
| Interrogatories, Answer of Knohr & Burchard to (6116) | 196 |
| Knohr & Burchard, Answer of to Libel (6111) . | 32 |
| Knohr & Burchard, Answer of to Interrogatories (6116) | 196 |
| Knohr & Burchard, Answer of The Port of Portland to Libel of (6116) | 201 |
| Knohr & Burchard, Exceptions of to Answer of The Port of Portland (6116) | 226 |
| Knohr & Burchard, Final Decree for (6111) ... | 136 |
| Knohr & Burchard, Final Decree on Libel of (6116) | 246 |
| Knohr & Burchard, Interlocutory Decree on Libel of (6116) | 233 |
| Knohr & Burchard, Libel of (6116) | 152 |
| Knohr & Burchard, Motion of for Final Decree (6111) | 135 |
| Knohr & Burchard, Order Sustaining Exceptions of to Answer of The Port of Portland (6116) | 229 |
| Libel of Wilhelm Wilhelmsen (6111) | 14 |
| Libel of Knohr & Burchard (6116) | 152 |
| Libel of Wilhelm Wilhelmsen, Answer of Knohr & Burchard to (6111) | 32 |

| INDEX. | Page |
|---|------|
| Libel of Knohr & Burchard, Answer of Wilhelm Wilhelmsen to (6116) | 175 |
| Libel of Wilhelm Wilhelmsen, Answer of The Port of Portland to (6111) | 40 |
| Libel of Knohr & Burchard, Answer of The Port of Portland to (6116) | 201 |
| Libel, Motion of The Port of Portland to Dis- allow Amendments to (6111) | 99 |
| Libel, Motion of Wilhelm Wilhelmsen to Amend (6111) | 94 |
| Libel, Objections of The Port of Portland to Amendments to (6111) | 99 |
| Libel of Wilhelm Wilhelmsen, Order to Amend (6111) | 97 |
| Libel of Wilhelm Wilhelmsen, Opinion on Objec- tions to Amendments to (6111) | 104 |
| Motion of Knohr & Burchard for Final Decree (6111) | 135 |
| Motion of The Port of Portland for Decree (6111) | 99 |
| Motion of Wilhelm Wilhelmsen, to Amend Libel (6111) | 94 |
| Motion of The Port of Portland to Amend Answer (6111) | 107 |
| Motion of The Port of Portland to Disallow Amendments to Libel of Wilhelm Wilhelm- sen (6111) | 99 |
| Motion to Dismiss Libel in Cause No. 6129 | 286 |
| Motion of Wilhelm Wilhelmsen to Set Aside De- cree (6116) | 248 |

| INDEX. | Page |
|---|------|
| Motion to Dismiss Libel, Cause No. 6129, Opinion on | 290 |
| Motion of Wilhelm Wilhelmsen to Strike Out Amendments to Answer of The Port of Portland, Order Denying (6111) | 118 |
| Motion of Wilhelm Wilhelmsen to Set Aside Decree, Order Denying (6116) | 261 |
| Notice of The Port of Portland of Appeal (6111) | 129 |
| Notice of The Port of Portland of Appeal (6116) | 254 |
| Notice of Wilhelm Wilhelmsen of Appeal (6116) | 262 |
| Objections of The Port of Portland to Proposed Amendments to Libel of Wilhelm Wilhelmsen (6111) | 99 |
| Objections of The Port of Portland to Amendments to Libel of Wilhelm Wilhelmsen, Opinion on (6111) | 104 |
| Objections of Wilhelm Wilhelmsen to Amendments to Answer of The Port of Portland (6111) | 114 |
| Objections of Wilhelm Wilhelmsen to Amendments to Answer of The Port of Portland, Opinion on (6111) | 116 |
| Objections of The Port of Portland to Cost Bill of Wilhelm Wilhelmsen (6111) | 140 |
| Objections of The Port of Portland to Cost Bill, Opinion on (6111) | 145 |
| Objections of The Port of Portland to Cost Bill, Order Sustaining (6111) | 146 |
| Objections of Wilhelm Wilhelmsen to Form of Decree (6116) | 230 |

| INDEX. | Page |
|--|------|
| Objections of Wilhelm Wilhelmsen to Form of Decree (6116) | 239 |
| Objections of Wilhelm Wilhelmsen to Form of Decree (6116) | 242 |
| Opinion on Exceptions to Answer of The Port of Portland (6111-6116) | 80 |
| Opinion on Merits (6111-6116) | 85 |
| Opinion on Objections of The Port of Portland to Amendments to Libel (6111)..... | 104 |
| Opinion Settling Decree (6111-6116) | 104 |
| Opinion on Objections of Wilhelm Wilhelmsen to Amendments to Answer of The Port of Portland (6111) | 116 |
| Opinion on Question of Damages (6111) | 119 |
| Opinion on Objections of The Port of Portland to Cost Bill of Wilhelm Wilhelmsen (6111) | 145 |
| Opinion, Settling Damages (6116)..... | 235 |
| Opinion on Motion to Dismiss Libel in Cause No. 6129 | 290 |
| Opinion on Exceptions to Answer of The Port of Portland in Cause No. 6129 | 291 |
| Opinion in Cause No. 6139..... | 294 |
| Order Allowing Wilhelm Wilhelmsen to Amend Libel (6111) | 97 |
| Order Allowing The Port of Portland to Amend Answer (6111) | 111 |
| Order Consolidating Causes for Appeal (6111- 6116) | 128 |

| INDEX. | Page |
|--|------|
| Order Denying Motion of Wilhelm Wilhelmsen to Strike Out Amendments to Answer of The Port of Portland (6111) | 118 |
| Order Denying Motion of Wilhelm Wilhelmsen to Set Aside Decree (6116) | 261 |
| Order Fixing Amount of Bond on Appeal of Wilhelm Wilhelmsen (6116) | 261 |
| Order Sustaining Exceptions of Wilhelm Wil- helmsen to Answer of The Port of Portland (6111) | 84 |
| Order Sustaining Objections of The Port of Portland to Cost Bill of Wilhelm Wilhelms- sen (6111) | 146 |
| Order Sustaining Exceptions of Knohr & Bur- chard to Answer of The Port of Portland (6116) | 229 |
| Port of Portland, Answer of to Libel of Wilhelm Wilhelmsen (6111) | 40 |
| Port of Portland, Answer of to Libel of Knohr & Burchard (6116) | 201 |
| Port of Portland, Assignment of Errors on Ap- peal of (6111) | 131 |
| Port of Portland, Assignment of Errors on Ap- peal of (6116) | 257 |
| Port of Portland, Exceptions of Wilhelm Wil- helmsen to Answer of (6111) | 74 |
| Port of Portland, Exceptions of Knohr & Bur- chard to Answer of (6116) | 226 |
| Port of Portland, Motion of to Amend Answer (6111) | 107 |

| INDEX. | Page |
|---|------|
| Port of Portland, Motion of for Decree (6111) . | 99 |
| Port of Portland, Motion of to Disallow Amendments to Libel of Wilhelm Wilhelmsen (6111) | 99 |
| Port of Portland, Objections of Wilhelm Wilhelmsen to Amendments to Answer of (6111) | 114 |
| Port of Portland, Objections of to Cost Bill of Wilhelm Wilhelmsen (6111) | 140 |
| Port of Portland, Objections of to Proposed Amendments to Libel of Wilhelm Wilhelmsen (6111) | 99 |
| Port of Portland, Opinion on Objections of, to Amendments to Libel of Wilhelm Wilhelmsen (6111) | 104 |
| Port of Portland, Opinion on Exceptions to Answer, Cause No. 6129 | 291 |
| Port of Portland, Opinion on Objections of to Cost Bill of Wilhelm Wilhelmsen (6111) .. | 145 |
| Port of Portland, Opinion on Exceptions to Answer of (6111-6116) | 80 |
| Port of Portland, Opinion on Objections of Wilhelm Wilhelmsen to Amendments to Answer of (6111) | 116 |
| Port of Portland, Order Allowing to Amend Answer (6111) | 111 |
| Port of Portland, Order Denying Motion of Wilhelm Wilhelmsen to Strike Out Amendments to Answer of (6111) | 118 |
| Port of Portland, Order Sustaining Exceptions of Knohr & Burchard to Answer of (6116) | 229 |

| INDEX. | Page |
|--|---------------|
| Port of Portland, Order Sustaining Exceptions of Wilhelm Wilhelmsen to Answer of (6111) | 84 |
| Port of Portland, Order Sustaining Objections of to Cost Bill (6111) | 146 |
| Port of Portland, Notice of of Appeal (6111) | 129 |
| Port of Portland, Notice of of Appeal (6116) | 254 |
| Stipulation as to Amount of Damages (6111) | 147 |
| Stipulation as to Apostles on Appeal (6111) | 148 |
| Stipulation as to Apostles on Appeal (6116) | 277 |
| TESTIMONY ON BEHALF OF WILHELM WILHELMSSEN: | |
| Julius Allyn | 669 |
| H. F. Champion | 1004 |
| (Resumed) | 1091 |
| Cross Examination for Port of Portland. | 1099 |
| Cross Examination for Knohr & Bur- chard | 1107 |
| Cross Examination for Grace & Co. | 1108 |
| Redirect Examination | 1111 |
| Eggars (Deposition of read) | 1001 |
| J. A. Hansen | 583 |
| Cross Examination for Knohr & Bur- chard | 609, 634, 639 |
| Cross Examination for Port of Portland | 630 |
| Redirect Examination | 636 |
| M. B. Hansen | 443 |
| Cross Examination for Knohr & Burchard | 492 |
| Cross Examination for Port of Portland | 537 |
| Redirect Examination | 543 |

| INDEX. | Page |
|--|------------|
| Testimony on Behalf Wilhelm Wilhelmsen—Cont'd. | |
| G. B. Hegardt | 1083 |
| Cross Examination for Port of Portland. | 1087 |
| Cross Examination for Knohr & Burchard. | 1089 |
| Redirect Examination | 1090 |
| Hardwig Johansen | 660 |
| Michael Moran | 665 |
| Michael Nolan | 756 |
| Cross Examination for Knohr & Bur- | |
| chard | 845, 958 |
| Cross Examination for Port of Portland | |
| | 895, 969 |
| Redirect Examination | 960 |
| Oehring (Deposition of read) | 982 |
| Cross Examination (read) | 987 |
| Captain Archie L. Pease | 973 |
| Archie L. Pease, Jr. | 1112 |
| Cross Examination for Knohr & Bur- | |
| chard | 1152, 1172 |
| Cross Examination for Port of Portland. | 1154 |
| Redirect Examination | 1165 |
| Harold Rasmussen | 560 |
| Cross Examination for Knohr & Burchard | 573 |
| R. Sandstrom | 667 |
| Yens Bernt Tollefsen | 641 |
| Cross Examination for Knohr & Burchard | 653 |
| TESTIMONY ON BEHALF OF KNOHR & BURCHARD: | |
| Fred A. Ballin | 1369 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1382 |

| INDEX. | Page |
|---|--------------------|
| Testimony on Behalf of Knohr & Burchard—Cont'd. | |
| Cross Examination for Port of Portland. | 1394 |
| Redirect Examination | 1398 |
| Captain A. Bergman | 303 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 316, 341, 352, 357 |
| Cross Examination for Port of Portland. | 332 |
| Redirect Examination | 344, 352 |
| W. R. Eckhart | 1301 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1317, 1341 |
| Cross Examination for Port of Portland. | 1340 |
| Redirect Examination | 1341 |
| William Eggars | 359 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 375, 395 |
| Cross Examination for Port of Portland. | 387 |
| Redirect Examination | 396 |
| R. P. Ellison | 1342 |
| Cross Examination for Port of Portland. | 1345 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1347 |
| Gerhart Gerdes | 421 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 426 |
| Redirect Examination | 426, 437 |
| Herman Oehring | 349, 404 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 412, 417 |

| INDEX. | Page |
|---|------------------|
| Testimony on Behalf of Knohr & Burchard—Cont'd. | |
| Cross Examination for Port of Portland. | 418 |
| Redirect Examination | 415 |
| Archie L. Pease, Jr. | 1178 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1206, 1268, 1286 |
| Cross Examination for Grace & Co., et al. | 1248 |
| Cross Examination for Port of Portland | |
| | 1270, 1300 |
| Redirect Examination | 1284 |
| Captain I. Turppa, Direct Examination for | |
| Knohr & Burchard | 674 |
| Direct Examination for Port of Portland | 685 |
| Cross Examination for Grace & Co. | 703 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 716, 750 |
| Redirect Examination for Knohr & Bur- | |
| chard | 746 |
| Redirect Examination for Port of Port- | |
| land | 748 |
| Captain I. Turppa (recalled) | 1359 |
| Cross Examination for Port of Portland. | 1360 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1361 |
| TESTIMONY ON BEHALF OF THE PORT OF PORTLAND: | |
| J. W. Shaver | 1348 |
| Cross Examination for Wilhelm Wilhelm- | |
| sen | 1351, 1358 |
| Cross Examination for Grace & Co. | 1357 |

| INDEX. | Page |
|---|------|
| Wilhelm Wilhelmsen, Additional Assignment of Errors on Appeal of (6116) | 281 |
| Wilhelm Wilhelmsen, Answer of Port of Port- land to Libel of (6111) | 40 |
| Wilhelm Wilhelmsen, Answer of to Libel (6116) | 175 |
| Wilhelm Wilhelmsen, Additional Assignment of Errors on Appeal of (6116) | 281 |
| Wilhelm Wilhelmsen, Assignment of Errors on Appeal of (6116) | 264 |
| Wilhelm Wilhelmsen, Cost Bill of (6111) | 137 |
| Wilhelm Wilhelmsen, Exceptions of to Answer of The Port of Portland (6111) | 74 |
| Wilhelm Wilhelmsen, Libel of (6111) | 14 |
| Wilhelm Wilhelmsen, Motion of to Amend Libel | 94 |
| Wilhelm Wilhelmsen, Motion of to Set Aside Decree (6116) | 248 |
| Wilhelm Wilhelmsen, Notice of of Appeal (6116) | 262 |
| Wilhelm Wilhelmsen, Objections of to Amend- ments to Answer of Port of Portland (6111) | 114 |
| Wilhelm Wilhelmsen, Objections of to Form of Decree (6116) | 230 |
| Wilhelm Wilhelmsen, Objections of to Form of Decree (6116) | 239 |
| Wilhelm Wilhelmsen, Objections of to Form of Decree (6116) | 242 |
| Wilhelm Wilhelmsen, Objections of The Port of Portland to Cost Bill of (6111) | 140 |
| Wilhelm Wilhelmsen, Order Allowing to Amend Libel (6111) | 97 |

| INDEX. | Page |
|---|------|
| Wilhelm Wilhelmsen, Order Denying Motion of to Set Aside Decree (6116) | 261 |
| Wilhelm Wilhelmsen, Order Fixing Amount of Bond on Appeal of (6116) | 261 |
| Wilhelm Wilhelmsen, Order Sustaining Excep- tions of to Answer of The Port of Portland (6111) | 84 |
| Wilhelm Wilhelmsen, Order Sustaining Objec- tions to Cost Bill of (6111) | 146 |
| Wilhelm Wilhelmsen, Opinion on Exceptions of to Answer of The Port of Portland (6111) | 80 |
| Wilhelm Wilhelmsen, Opinion on Objections to Cost Bill of (6111) | 145 |

*United States Circuit Court of Appeals for the
Ninth Circuit.*

NAMES AND ADDRESSES OF THE ATTORNEYS OF RECORD:

Mr. William C. Bristol,
Wilcox Building, Portland, Oregon,
Proctor for Wilhelm Wilhelmsen.

Wood, Montague & Hunt, and Mr. Erskine Wood,
Yeon Building, Portland, Oregon,
Proctors for Knohr & Burchard.

Teal, Minor & Winfree, and Mr. Wirt Minor,
Spalding Building, Portland, Oregon,
Proctors for The Port of Portland.

IN THE
District Court of the United States
For the District of Oregon

No. 6111.

WILHELM WILHELMOSEN, owner of the steel
steamship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle, and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, tackle and apparel,

Respondent and Appellant.

No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libellants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents and Appellants.

CAPTION.

BE IT REMEMBERED, That on August 30, 1913, there was filed in the District Court of the United States for the District of Oregon a libel in

which Wilhelm Wilhelmsen, owner of the steamship "Thode Fagelund," was libellant, against the German bark "Thielbek," her boats, furniture, equipment, tackle, and apparel, and against The Port of Portland, owner of the steam tug "Ocklahama," said cause being number 6111 in said Court. On said date said libellant filed a stipulation for costs in the sum of \$500 with the National Surety Company of New York as surety thereon, and thereafter on said date there was duly issued out of said Court a warrant of arrest and monition commanding the United States Marshal for the District of Oregon to arrest the said German bark "Thielbek," and also on said date there was issued out of said Court a monition in the nature of a summons, commanding the said United States Marshal to cite the respondent, The Port of Portland, to appear and answer the said libel. That in obedience to the command of said warrant of arrest the said German bark "Thielbek" was duly arrested by the United States Marshal, and service of said monition was duly made upon said respondent, The Port of Portland. That said warrant of arrest with the return of service thereon was duly filed in the office of the clerk of said Court on September 30, 1913, and said monition with return of service thereon was duly filed in said clerk's office on September 15, 1913. On September 30, 1913, A. Bergmann, as master of said bark "Thielbek," filed a claim on behalf of the owners of said ship, said claim having been duly verified by the said claimant on August 30, 1913. On Sep-

tember 19, 1913, there was duly filed in said Court an answer of said claimant of said bark "Thielbek." On September 23, 1913, by an order of said Court duly entered, appraisers were appointed by the Court to appraise the value of said bark and thereafter, on September 24, 1913, said appraisers reported to the Court the appraised value of said bark to be \$30,000, and thereafter, on September 30, 1913, the said claimant filed in said Court a stipulation in the sum of \$30,000 to abide by and pay the decree, with the Canadian Bank of Commerce as surety thereon, which stipulation was duly approved by a judge of said Court and said bark was by order of the Court released to the claimant. Thereafter, on October 20, 1913, pursuant to stipulation and order extending the time to file its answer, the said respondent, The Port of Portland, filed its answer herein. Thereafter, on December 17, 1913, said libelant filed in said cause its exceptions to said answer of the respondent, The Port of Portland. Thereafter, on December 29, 1913, said exceptions came on to be heard by the Court before the Honorable Robert S. Bean, District Judge, and on February 23, 1914, by an order duly entered in said cause, said exceptions were sustained, and the Court filed on said date its opinion on said exceptions. By an order of said Court entered on September 8, 1914, this cause and cause No. 6116, in which Knohr & Burchard, Nfl., owners of the German bark "Thielbek," are libelants, against the steamship "Thode Fagelund," and also cause No. 6129, in which

W. R. Grace & Company are libelants against the German bark "Thielbek" and The Port of Portland, and cause No. 6130, in which E. I. DuPont De Nemours Powder Company are libelants against the German bark "Thielbek" and The Port of Portland, were consolidated for the purposes of trial, and it was ordered that all evidence taken or thereafter to be taken in either of said cases should be received in evidence in these cases. Thereafter evidence was taken by the respective parties upon the issues in said cause by deposition and also orally before the Court upon the trial. Said cause, together with the other causes mentioned in said order of September 8, 1914, came on for trial by the Court upon the pleadings and the evidence before the Honorable Robert S. Bean, District Judge, on September 8, 1914, and said trial continued from day to day until September 11, 1914, and was continued from said date for further trial to September 15, and on said date came on for further trial, and said trial continued from day to day until September 18, 1914, and was again continued for further trial until September 28, 1914, and came on for further trial on said date and continued from day to day until September 30, 1914. On November 16, 1914, the Court filed in this cause an opinion directing that a decree be entered in accordance with the said opinion, reserving, however, the question of the amount of damages to be thereafter determined, but no order or decree was entered in this cause at said time upon said opinion. There-

after, on November 19, 1914, said libelant filed in said cause a motion for leave to amend his libel, and on November 30, 1914, an order was duly entered allowing said motion and said libel was amended in accordance with said order. On December 2, 1914, the said respondent, The Port of Portland, filed in said cause objections to the proposed amendment to the libel. On December 7, 1914, said objections came on for hearing by the Court before the Honorable Robert S. Bean, District Judge, and on December 14, 1914, an opinion on said objections was filed, but no order was entered on said opinion. On December 15, 1914, said respondent, The Port of Portland, filed a motion for leave to amend its answer, and by an order entered in said Court on December 15, 1914, said motion of The Port of Portland was allowed and its answer was amended. Thereafter, on December 16, 1914, said libelant filed in said cause a motion to vacate said order allowing said respondent to amend its answer and to disallow said motion to amend, and thereafter on January 4, 1915, after a hearing upon the said motion, by an order entered on that date, said motion was denied, and the Court filed in said cause its opinion. Thereafter, on September 29 and 30, 1915, said cause came on for further hearing by the Court before the Honorable Robert S. Bean, District Judge, as to the amount of damages. Thereafter, on October 25, 1915, a decree was duly entered in favor of said libelant and against the respondent, The Port of Portland, awarding damages in the

sum of \$43,804.66, together with interest thereon from August 24, 1913, and costs and disbursements to be taxed, and on said date the Court filed in said cause its opinion, and on said date by an order duly entered said cause was consolidated for the purposes of appeal with said causes numbered 6116, 6129, and 6130. On November 9, 1915, said respondent, The Port of Portland, filed its notice of appeal, and on November 12, 1915, filed its bond for costs on appeal in the sum of \$250.00, with S. M. Mears and D. C. O'Reilly as sureties thereon, together with a notice of the filing of said bond, and thereafter said bond was duly approved by the judge of said Court. On November 16, 1915, said respondent, The Port of Portland, filed in said cause its assignment of errors. Thereafter, on November 27, 1915, said claimant of the bark "Thielbek" filed in said cause a motion for a final decree dismissing the libel as to the claimant of the German bark "Thielbek," and on January 3, 1916, said motion was allowed and a final decree entered dismissing the libel as to said claimant and awarding said claimant costs against said libelant. On January 5, 1916, said claimant filed in this cause a cost bill against the said libelant, and on January 7, 1916, objections were filed to said cost bill by said libelant, and on January 12, 1916, a cost bill was filed in this cause by said libelant against said respondent, The Port of Portland, and on January 21, 1916, objections were filed to said cost bill by said respondent. Thereafter, on February 7, 1916, after a hearing duly had by the

Court before the Honorable Robert S. Bean, District Judge, costs were duly taxed in favor of said claimant and against the libelant in the sum of \$2247.93, and the several objections of the respondent to the cost bill of the libelant were sustained and costs were taxed in favor of said libelant against the said respondent, The Port of Portland, in the sum of \$177.69, and on said date an opinion was duly filed by the Court upon said objections to the cost bills. Thereafter, on February 15, 1916, there was filed in said cause a stipulation for apostles on appeal.

On September 13, 1913, a libel was filed in said Court by Knohr & Burchard, Nfl., owners of the German bark "Thielbek," against the Norwegian steamship "Thode Fagelund," her engines, boilers, tackle, apparel, and furniture, and against The Port of Portland, a municipal corporation, said cause being No. 6116, and on said date said libelant filed in said Court a stipulation for costs in the sum of \$250.00, with A. E. Mann as surety thereon, and on said date there was duly issued out of said Court a warrant of arrest and monition commanding the United States Marshal for the District of Oregon to arrest the said steamship "Thode Fagelund," and on said date there was also issued out of said Court a monition in the nature of a summons commanding the United States Marshal to cite the respondent, The Port of Portland, to answer the said libel. That pursuant to the command of said warrant, said vessel was duly arrested by the United States Marshal, and said respondent, The Port of Portland,

was duly served with said monition, and said warrant of arrest and said monition each with return of service thereon were duly filed in the office of the clerk of said Court on September 15, 1913. Thereafter, on September 15, 1913, there was filed in said Court a claim by M. B. Hansen, master of the said "Thode Fagelund," on behalf of the owners thereof, and there was also filed by said claimants on September 15, 1913, a stipulation for costs in the sum of \$250.00, with the American Surety Company, of New York, as surety thereon, and also on said date there was filed by said claimant a stipulation to abide by and pay the decree in the sum of \$30,000, with the American Surety Company, of New York, as surety thereon, which stipulation was duly approved by the judge of said Court, and by an order of said Court duly entered said steamship was released to the claimant on said date. Thereafter, on October 4, 1913, there was duly filed in said cause the answer of the claimant, and on October 23, 1913, there was duly filed in said Court an answer of the libelant to the interrogatories propounded by the claimant in its said answer, and on October 31, 1913, pursuant to stipulations and orders extending the time therefor, there was duly filed in said Court the answer of the respondent, The Port of Portland. Thereafter, on December 17, 1913, exceptions to the answer of The Port of Portland were duly filed by the libelant and said exceptions came on to be heard by the Court before the Honorable Robert S. Bean, District Judge, on De-

ember 29, 1913, at the same time and jointly with the exceptions filed by the libelant in cause No. 6111 to the answer of The Port of Portland in that cause. Thereafter, on February 23, 1914, an order was duly entered in said cause sustaining the said exceptions, and an opinion on said exceptions entitled in this cause and also entitled in cause No. 6111 was duly filed in said cause No. 6111. By an order of said Court entered on September 8, 1914, this cause and cause No. 6116, in which Knohr & Burchard, Nfl., owners of the German bark "Thielbek," are libelants, against the steamship "Thode Fagelund," and also cause No. 6129, in which W. R. Grace & Company are libelants, against the German bark "Thielbek" and The Port of Portland, and cause No. 6130, in which E. I. DuPont De Nemours Powder Company are libelants, against the German bark "Thielbek" and The Port of Portland, were consolidated for the purposes of trial, and it was ordered that all evidence taken or thereafter to be taken in either of said cases should be received in evidence in these cases. Thereafter, evidence was taken by the respective parties upon the issues in said cause by deposition and also orally before the Court upon the trial. Said cause, together with the other causes mentioned in said order of September 8, 1914, came on for trial by the Court upon the pleadings and the evidence before the Honorable Robert S. Bean, District Judge, on September 8, 1914, and said trial continued from day to day until September 11, 1914, and was continued from said

date for further trial to September 15, 1914, and on said date came on for further trial and said trial continued from day to day until September 18, 1914, and was again continued for further trial until September 28, 1914, and came on for further trial on said date, and continued from day to day until September 30, 1914. On November 16, 1914, there was duly filed in said cause an opinion of the Court, directing that a decree be entered in accordance with the said opinion, but reserving the question of damages for further trial by the Court, said opinion being entitled in this cause and also in causes Nos. 6111, 6129, and 6130, and was duly filed in said cause No. 6111. On November 18, 1914, said libelant filed in said cause a motion for decree in accordance with the said opinion. On December 7, 1914, this cause was heard by the Court before the Honorable Robert S. Bean, District Judge, upon the form of decree. On December 14, 1914, said Court filed an opinion settling the decree to be entered in this cause, said opinion being entitled in this cause and also in cause No. 6111, and was filed in cause No. 6111. On December 15, 1914, objections were filed by said claimant to the form of decree applied for. Thereafter, on December 15, 1914, there was entered in said cause an interlocutory decree awarding damages to the said libelant, together with interest and costs, and thereafter, on May 31, 1915, this cause came on for further trial by the Court before the Honorable Robert S. Bean, District Judge, as to the amount of damages sustained by the libelant,

and thereafter, on June 14, 1915, the Court determined the amount of damages suffered by said libellant and filed in said cause its opinion and directed a decree to be prepared in accordance with said opinion, and on said date said libellant submitted a form of decree, and on June 15, 1915, objections to the said proposed form of decree were filed by the said claimant. Thereafter, on June 22, 1915, said claimant filed in said cause objections to the form of decree. Thereafter, on June 24, 1915, a final decree was duly entered in said cause in favor of the said libellant and against the steamer "Thode Fagelund" and The Port of Portland and either of them for the sum of \$12,805.26, together with interest thereon from October 20, 1913, until paid, and costs to be taxed. Thereafter, on June 29, 1915, said claimant filed in said cause a motion to vacate said decree, and thereafter said motion came on to be heard by the Court before the Honorable Robert S. Bean, District Judge, and on July 19, 1915, an order was entered denying said motion. On July 3, 1915, the said respondent, The Port of Portland, filed in said cause a notice of appeal and also an assignment of errors on appeal, and on July 7, 1915, said respondent, The Port of Portland, filed in said cause its bond for costs on appeal in the sum of \$250.00, with S. M. Mears and D. C. O'Reilly as sureties thereon, which bond was duly approved by a judge of said Court. Thereafter, on July 21, 1915, there was duly filed by said claimant a notice of appeal and also a petition for appeal, and said

appeal was allowed on said date and the amount of supersedeas bond of claimant fixed at \$500.00, and on said date said claimant also filed its supersedeas bond on appeal in the sum of \$500.00 with the American Surety Company, of New York, as surety thereon, which bond was duly approved by a judge of said Court. On July 9, 1915, said claimant filed in said Court its cost bill and thereafter the costs were duly taxed in this cause in favor of said claimant in the sum of \$239.49, and thereafter on February 15, 1915, there was filed in said cause a stipulation for apostles on appeal. Thereafter, on February 21, 1916, said claimant filed in said cause additional assignments of error. On February 15, 1916, there was filed for the purposes of appeal a stipulation stipulating the amount of appellee's damages at \$12,874.26, with interest from October 20th, 1913, until paid, and costs.

There was also filed in said Court on October 9, 1913, a libel in which W. R. Grace & Company was libellant against the German bark "Thielbek" and The Port of Portland, owner of the steam tug "Ocklahama," said cause being numbered 6129 in said Court. There was also filed in said Court on October 9, 1913, a libel in which the E. I. DuPont De Nemours Powder Company was libellant against the German bark "Thielbek" and The Port of Portland, owner of the steam tug "Ocklahama," said cause being numbered 6130 in said Court. Thereafter, process was duly issued on each of said libels and was duly served, and thereafter the claimant of

the German bark "Thielbek" filed in each of said causes a motion to dismiss the said libels, and said motions having come on to be heard by the Court before the Honorable Robert S. Bean, District Judge, on November 3, 1913, an order was made denying each of said motions to dismiss the said libels, and on said date the Court filed its opinion on said motion to dismiss, said opinion being entitled in each of said causes and being filed in said cause No. 6129.

There was also filed in said Court on October 16, 1913, a petition of Knohr & Burchard, Nfl., as owners of the German bark "Thielbek," to limit their liability for the damages complained of in the respective libels enumerated in this caption, said cause being numbered No. 6139 in said Court. Thereafter, on October 18, 1913, upon application therefor by said owners of the "Thielbek," an order was made by said Court appointing appraisers to appraise the value of said "Thielbek." Thereafter, on October 22, 1913, a motion was filed by Wilhelm Wilhelmsen, libelant in said cause No. 6111, W. R. Grace & Company, libelant in said cause No. 6129, and the E. I. DuPont De Nemours Powder Company, libelants in said cause No. 6130, to revoke said order appointing appraisers. Thereafter, said motion came on to be heard by the Court before the Honorable Robert S. Bean, District Judge, and on November 3, 1913, an order was made by said Court denying said motion to vacate the order appointing

appraisers and the Court filed in said cause its opinion.

G. H. MARSH,
Clerk.

*In the District Court of the United States for the
District of Oregon.*

July Term, 1913.

Be it remembered, that on the 30th day of August, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a libel, in words and figures as follows, to wit:

LIBEL.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund",

Libelant,

vs.

The German bark "THIELBEK", her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE CHARLES E. WOLVERTON AND
ROBERT S. BEAN, JUDGES OF THE ABOVE ENTITLED
COURT IN ADMIRALTY SITTING:

The libel of Wilhelm Wilhelmsen, of Tunsberg, Norway, owner of the steel steamship "Thode

Fagelund," of which M. B. Hansen is or lately was master, against the German bark "Thielbek," of which A. Bergmann is or lately was master, her boats, furniture, equipment, tackle and apparel, and The Port of Portland, owner of the tug boat "Ocklahoma," of which Isaac Turppa is or lately was master, her engines, boilers, machinery, equipment, furniture, tackle and apparel, and against all persons lawfully intervening in either vessel for their interest, in a cause of collision, civil and maritime, in this district occurring, doth respectfully propound and articulate:

ARTICLE I.

That at the times and dates in this libel propounded and now the libelant had been, then was and still is the owner of the steel steamship "Thode Fagelund" and a resident of Tunsberg, Norway, the home port of said vessel.

ARTICLE II.

That at the times and dates in this libel propounded and up to the happening of the events thus appearing, the "Thode Fagelund" was a steel steamship of about 400 feet length, about 52 feet beam and about 28 feet depth of hold, with tonnage engross of 4352 and net 2826, equipped with one screw and the necessary engines, boilers and machinery and officers and crew of about thirty men and in every respect tight, stanch, strong and seaworthy, well tackled, manned, appareled and supplied, with M. B. Hansen as master thereof and under time charter to W. R. Grace & Co. of San

Francisco, and so constructed and built, being not more than ten years of age, as to engage upon voyages upon the high seas with all kinds of merchantable freight.

ARTICLE III.

That at the times and dates in this libel propounded the German bark "Thielbek," of which A. Bergmann now is or lately was master, is of the port of Hamburg in the Empire of Germany and owned by Knohr & Burchard, Nfl., Neptunhaus, Hamburg, Germany, and is a four-masted vessel of about 4350 tons register and in ballast on an inward bound voyage to the port of Portland in this district and is now lying at the town of Linnton in the Willamette River discharging ballast.

ARTICLE IV.

That at all the times and dates propounded in this libel The Port of Portland then was and became on the 13th day of July, 1909, and ever since has been the owner of the steam vessel "Ocklahama," a stern wheel steamboat officially numbered 155310, of gross tonnage 676 and net 565 and permanently enrolled on the 17th of July, 1909, and certified on the 26th day of August, 1913, with a full complement of officers and crew, engines, boilers and machinery, of which Isaac Turppa then was or lately is master, with permission to navigate the waters of the Columbia River and tributaries between all points above Astoria, and at said times said steamboat "Ocklahama" was being operated by her owner, The Port of Portland, as a boat to assist

and convoy inward bound vessels from the high seas arriving at the port of Astoria inward bound for Portland and return thereto on their foreign voyages.

ARTICLE V.

That The Port of Portland is a municipal corporation with authority and power among many other things to maintain an open channel to the sea in the Willamette and Columbia Rivers, and by virtue of authority conferred upon it by the statutes of the State of Oregon authorized to operate boats and tugs upon said Columbia River and its tributaries to convey and convoy shipping inward and outward bound to and from the port of Portland and to the Pacific Ocean, and at all the times and dates propounded in this libel was engaged in said business and in respect of the particular matters herein propounded operating its steam vessel, the said stern wheel steamboat "Ocklahama," in conjunction with and to convey and convoy the said German bark "Thielbek" inward bound to the port of Portland.

That the officers and crew upon the said "Ocklahama" are under the control, authority and direction of the said municipal corporation and were so at the time of the events propounded herein.

ARTICLE VI.

That on or about and some time after midnight of Sunday, the 24th day of the month of August in the year 1913, in the Columbia River somewhere below Astoria, within this district and within the

jurisdiction of this honorable court, the said stern wheel steamboat "Ocklahama," together with the German bark "Thielbek," then being navigated with Archie Pease, Jr., as pilot and in charge, and Isaac Turppa, master of said "Ocklahama," off duty and asleep, proceeded together up the Columbia River channel on the Oregon side to and in front of the port of Astoria, reaching a point somewhat abreast of the dock or wharf of the Oregon-Washington Railroad & Navigation Company in said port of Astoria on the inward bound voyage of said German bark "Thielbek" to the port of Portland, there to discharge ballast and load cargo outward for Europe.

ARTICLE VII.

That during the said time when the "Ocklahama" and "Thielbek" were so being navigated the weather was clear, the moon bright, the water was calm and the tide was running flood or nearly so; that shipping customarily lies anchored in the channel way at the port of Astoria and that under the said conditions of wind, tide and weather on an incoming tide said shipping riding at its anchor chains naturally floats athwart the channel way; that all of the conditions of tide, of wind, of weather and of said shipping were known to the officers and crew in charge of and then navigating the "Ocklahama" and the "Thielbek," and they did know that the United States Government dredge "Chinook" was anchored northward of the fair channel way in the port of Astoria opposite the said wharf or dock of

the Oregon-Washington Railroad & Navigation Company, and the said Isaac Turppa and the said Archie Pease, master and pilot respectively of the said "Thielbek" and "Ocklahama," knew and observed on their downward passage, prior to the events herein propounded, that the "Thode Fagelund" and the United States Government dredge "Chinook" were then anchored in the usual channel for outgoing vessels, leaving a sufficient clearway therein; and they did likewise know and observe that the "Thode Fagelund" was bound seaward fully cargo laden and would naturally proceed down the Columbia River past the port of Astoria on the then expected outgoing flood tide on her voyage.

ARTICLE VIII.

That prior to the said Sunday morning of the 24th day of the month of August in the year 1913, the "Thode Fagelund" had been laden at Portland by her charterers, W. R. Grace & Co., with a full cargo, consisting of one-third of her deck capacity in piling and about two-thirds of her deck capacity in timbers, together with a full hold of dimension and specified lumber stowed below and in the 'tween decks, and beside this some twenty-five tons of dynamite stowed aft for a voyage from the port of Portland in this district to Panama on the Isthmus of Darien, thence to return in ballast to the order of charterers, and being so laden and having duly cleared she left the port of Portland to arrive off the port of Astoria so that she might come to an anchorage off the dock or wharf of the said railroad com-

pany in the channelway and avail of the outgoing flood tide on the morning of Sunday aforesaid for her voyage upon the high seas.

ARTICLE IX.

That on or about twenty minutes past the hour of three on the morning of Sunday, the 24th day of the month of August in the year 1913, with M. B. Hansen as master and M. Noland as pilot, the said "Thode Fagelund," being then fully laden as aforesaid and in all respects tight, stanch, strong and in good seaworthy condition and in all respects well officered, well manned, well equipped, well tackled and well supplied, and being then and there carefully and prudently navigated, and with all of her lights properly set, trimmed and burning, and with lookouts and crew properly stationed and placed, weighed anchor and under the direction of her pilot started ahead and toward the mouth of the Columbia River under a slow bell; that at the time the said "Thode Fagelund" weighed anchor the "Ocklahama" and the "Thielbek" were not in sight, but the United States Government dredge "Chinook" was then swinging with the flood tide athwart the channelway with her stern toward the Astoria side of the channel; that the United States Government dredge "Chinook" was plainly observable, the sky was clear and unobscured, the tide was about at flood and the moon light bright with hardly any wind and the river calm, and under these conditions and at said time the said "Thode Fagelund," having not yet gathered steerage way, but when within

about one ship's length from the United States Government dredge "Chinook," there was observed by the pilot of the "Thode Fagelund" about a quarter of a point on her starboard bow the "Ocklahama" and the "Thielbek" coming full speed toward said narrow channelway between the stern of the United States Government dredge "Chinook" and the railroad wharf up said Columbia River at said point and upon a course, under a varying helm, between the stern of the United States Government dredge "Chinook" and the said railroad wharf, whereupon the pilot of the "Thode Fagelund" promptly blew two (2) whistles, signaling, under the inland navigation rules of the United States, that a passage was desired to be made on the starboard side of each other, but no answer was given thereto, whereupon the engines of the "Thode Fagelund" were immediately stopped and two (2) more blasts of the whistle were then given, and this time they were answered by the "Ocklahama" with two (2) blasts of her whistle, which signified a starboard passage, upon which the pilot of the "Thode Fagelund" then had a right to rely; nevertheless, the said "Ocklahama" and "Thielbek" coming upon said flood tide upstream full speed ahead were so navigated, under a varying helm, without prudence and in so careless and negligent a way as to crowd the fair channelway between the stern of the said United States Government dredge "Chinook" and the said railroad wharf, without giving any signal of her approach or even responding to the signals given her by the

"Thode Fagelund" until after the first one had been blown as aforesaid and without giving the "Thode Fagelund" clearway and distance for her passage to pass on port or starboard side and clear the stern of the United States Government dredge "Chinook," and so it was that the engines of the "Thode Fagelund" were then reversed full speed astern and her pilot blew four (4) whistles, consisting of several short and rapid blasts of the steam whistle, in pursuance of the inland navigation rules, but no answer was given thereto by the said "Ocklahama," and thereupon the port anchor with fifteen (15) fathoms of chain was let go from the "Thode Fagelund" and her headway completely stopped, and again and then her pilot gave four (4) short and rapid blasts of her steam whistle, which were not answered by the "Ocklahama," but the said "Ocklahama" and the said "Thielbek" came on their varying course without giving any fairway or clearance to the said "Thode Fagelund" or answering her signals, and in disregard of the inland navigation rules and the duty to preserve a fairway in the channel to a fully laden vessel passing outward, the said "Ocklahama" and "Thielbek" struck and collided with the "Thode Fagelund" while her headway was stopped, while her anchor was down with chains as aforesaid and her engines backing full speed, at a time not more than twelve (12) minutes after she had weighed anchor and before she had proceeded more than one thousand (1,000) feet upon her voyage, and the said "Ocklahama" and "Thielbek" were

then so navigated as to strike and collide with the port bow of the "Thode Fagelund" at and near the stem thereof, cutting her about ten (10) feet below the water line and forcing her stem to starboard and her bow plates for about nineteen (19) strakes, together with her timber and beams, within said steamship, rendering her wholly unseaworthy and unable to proceed upon her voyage.

ARTICLE X.

That the said "Ocklahama" and "Thielbek" were negligently and carelessly and imprudently navigated in defiance of the established maritime practice, the rules of navigation and the circumstances at the time in this, to-wit:

The said Archie Pease, Jr., in the wheel house of the said "Ocklahama," was inexperienced and Isaac Turppa was not in the wheel house of the "Ocklahama," but asleep;

That no lookout was kept upon the "Thielbek" or upon the "Ocklahama";

That the "Ocklahama" and "Thielbek" were navigated with a varying helm; that is to say, said helm was at one time, when a collision to a reasonable and prudent navigator was obvious, put hard astarboard, while at another time, and just previous to the actual striking and colliding, the helm on said "Ocklahama" was put hard aport;

That the "Ocklahama" did not, in accordance with the inland navigation rules and as required, promptly answer signals given to her or observe and obey the same;

That when the "Ocklahama" did answer signals given to her she did not act in accordance and conformity with said signals, but contrary thereto and under a varying helm;

That in a narrow channel when between the stern of said United States Government dredge "Chinook" and the said railroad wharf, contrary to law and against the established maritime practice in navigation, said "Ocklahama" was operated at too high a rate of speed, so high in fact that at the point of impingement the prow of the "Thielbek" at the time of the striking, when the engines of the "Ocklahama" are said to have been backing full speed, said prow entered the bow plates of said "Thode Fagelund" a distance of several feet and to a point some ten (10) feet below the water line as aforesaid;

That the said "Ocklahama," her master and pilot, disregarded and failed to act on or to observe the known position of the United States Government dredge "Chinook" and that the "Thode Fagelund" was departing on an outward bound voyage on the turn of the tide;

That the "Thielbek," her master, officers and crew, took no precaution or did or performed anything whatsoever to avert the impact of collision or the striking the "Thode Fagelund" or to lessen the force and momentum of the blow;

That the said Archie Pease, Jr., the pilot on the "Ocklahama," and the master, officers and crew of the "Thielbek" did not watch the compass bearing of the approach of the "Thode Fagelund";

That when said Archie Pease, Jr., pilot on the "Ocklahama," saw the red light of the "Thode Fagelund" without seeing the green light, he did not act in conformity with established practice of navigation and conduct his vessel as he should have done, to-wit, to a safe passing between the "Thode Fagelund" and the railroad wharf;

That each and all of the acts last above recited done or omitted by the "Ocklahama," her master or pilot, were likewise done and omitted by the said "Thielbek," her master, officers and crew;

That both the said "Ocklahama" and the said "Thielbek" took chances in reckless disregard of the positions they were in with respect to the United States Government dredge "Chinook" and the "Thode Fagelund" in attempting, while running light and in ballast with an incoming flood tide to pass astern of the United States Government dredge "Chinook" while going at a high rate of speed without giving the "Thode Fagelund" sufficient clearway, either one side or the other, of the then available open channelway;

And so it was that the said "Thielbek" and "Ocklahama" collided with, struck and damaged the "Thode Fagelund."

ARTICLE XI.

That at the instant when the imminent danger of collision was first perceived there was neither time nor opportunity, ways, means or manner in the navigation or operation of the "Thode Fagelund" to get out of the way of the oncoming "Ockla-

hama" and "Thielbek," although it is true that if at the time the "Thode Fagelund" first signaled the "Ocklahama" and thenceforth the "Ocklahama" had kept upon a passing course, then required by the inland navigation rules, and not altered her helm she could and would have cleared the "Thode Fagelund" between the said railroad wharf and the position the "Thode Fagelund" was then in, but at the instant that the oncoming "Ocklahama" and "Thielbek" could be perceived attempting to cut close to the stern of the United States Government dredge "Chinook," in disobedience to the signals given her and in violation of the navigation laws and maritime practice, and between that instant and when the actual impact occurred, the "Thode Fagelund" had not sufficient steerage way nor other means of locomotion to get out of the way or avoid said collision than those steps and means that were taken at the time.

ARTICLE XII.

That so far as can be presently ascertained, and reserving the right to further articulate and propound other and more extensive damage, there was brought about, occasioned and incurred by the "Thielbek" striking the "Thode Fagelund" as aforesaid an opening in her port bow about eight (8) feet wide on the deck line and extended downward to a point ten (10) feet below the water line in the shape of the prow of the bark "Thielbek" and there was thereby torn apart, shattered and broken all of the plates next to the stem on the port side and all

corresponding frames with the reverse frames and the stringer plates with the aprons and all the iron work appurtenant thereto; the stem was forced to starboard and the corresponding plates on the starboard side were crimped as a result of the stem being thus forced over, and all of the iron work on the starboard side in the vicinity of the impact of the blow disturbed and disarranged; her windlass and chain pipe were broken; her compressor displaced; her decks in way strained and all fittings, rails, warping chocks rendered utterly unfit for use; that the impact of the blow of the collision turned and crimped the plates on the port bow inward and carried therewith all timber and deck planking and beams so that between the collision bulkhead and the stem of said vessel and to a point considerably abaft the collision bulkhead, on the port side, the whole structure of said ship "Thode Fagelund" is a wreck, and that the probable cost, loss, damage and expense to which this libellant shall be put, so far as can now be ascertained or estimated, to place said "Thode Fagelund" in like good order and tight, staunch, strong and seaworthy condition as she was prior to said collision is and will be to said ship along not less than seventy-five thousand dollars (\$75,000.00).

ARTICLE XIII.

That at the time of said collision the "Thode Fagelund" was then and is now under the aforesaid time charter to W. R. Grace & Co. aforesaid, and that as a result of delays for repair and recondition-

ing, the charterers will undoubtedly withhold and refuse to pay charter hire and that said libelant will entirely lose the freight earning capacity of his said vessel; that the length of time to repair and recondition cannot now be accurately stated, but as accurate an estimate as libelant can give from preliminary surveys had is not less than six (6) months, depending upon whether facilities can be obtained at the port of Portland, having due regard to the conditions of shipping, to drydock said vessel or to place her in a berth or position where she can be repaired, there being no public docks in the port of Portland or open berths for foreign vessels generally arranged in this port to provide for such exigencies; that for said period the earned freight or charter money at the earning rate of the said "Thode Fagelund" is twenty-five thousand dollars (\$25,000).

ARTICLE XIV.

That libelant does not know who are the owners of the cargo of said vessel, but believes that W. R. Grace & Co. of San Francisco, as time charterers, are either owners thereof or consignees to their order of the cargo laden on said steamship, but whether that be so or not, in order to place said ship in safety and prepare her so she might come to Portland for repair, upon competent survey had by certified surveyors with the approval of the Vice Consul of Norway, it was found necessary and expedient to discharge all of her deck load of piling at Astoria, to take out of her afterhold all of the twenty-five

tons of dynamite and to discharge the larger portion, if not all, of her deck load of lumber and for that purpose to take said ship to ports or berths where that could be accomplished and said ship towed to the port of Portland, Oregon; that the cost, loss, charge and expense incident thereto, and all of which was occasioned, incurred and brought about by the striking of said steamship by the "Thielbek" as aforesaid, amounts to the sum of twenty-five thousand dollars (\$25,000.00), towage, surveys, re-towage and changes of berth and of port, insurance and particular and general average considered if these arise.

ARTICLE XV.

That the libelant, from said collision and the unskillful and improper management of said "Ocklahoma" and "Thielbek" as hereinbefore propounded, has suffered and been occasioned and sustained damage to the amount of one hundred and twenty-five thousand dollars (\$125,000) or thereabouts, and for this sum he claims reparation herein.

ARTICLE XVI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore, the libelant prays process in due form of law according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction may issue against the said German bark "Thielbek," her tackle, sails, apparel, fur-

niture, boats and other appurtenances and equipment, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that there issue against The Port of Portland, the owner of said "Ocklahama," the monition of this court directing it to be and appear and answer herein to the premises hereinbefore propounded or that a judgment may be taken against it as to the honorable court may seem by its decree competent to be pronounced, and that this honorable court would be pleased to decree to the libelant the payment of all such sums, losses, costs, charges, damages and expenses as may be found to be due libelant by way of compensation in damages in consequence of said collision and decree, the same to be paid with interest and costs, and that as against the said "Thielbek" and all persons intervening therein for their interest, and that as against the said The Port of Portland, such other, further and different relief or redress may be had and given to libelant as to right and justice may appertain and this court find itself competent to give in the premises.

WILH. WILHELMSSEN,

Libelant.

By M. B. HANSEN,

Master.

W. C. BRISTOL,

Proctor and Advocate for Libelant.

UNITED STATES OF AMERICA, }
District and State of Oregon. } ss.

This is to Certify, that on this 30th day of August, 1913, personally appeared before me M. B. Hansen, who, being by me first duly sworn, did on oath depose and say he is the master of the "Thode Fagelund" and the authorized representative of the owner, the libelant, Wilhelm Wilhelmsen, and authorized to represent him, the libelant, the said owner, and the "Thode Fagelund" as husband of said ship; that he is authorized and empowered to sign for and in the name of the libelant; that he has read the foregoing libel; that he is personally familiar with the matters and things therein propounded; that the matters and things therein propounded are true as he verily believes; that he makes this verification for and on behalf of the libelant and on behalf of the "Thode Fagelund" and as master of said steamship.

M. B. HANSEN.

Subscribed and sworn to before me this 30th day of August, 1913, at Portland, Oregon.

[Seal]

F. E. GRIGSBY,

Notary Public for Oregon.

Filed August 30, 1913. A. M. Cannon, Clerk.

And afterwards, to-wit, on the 19th day of September, 1913, there was duly filed in said court, answer of the claimant of the "Thielbek," in words and figures as follows, to-wit:

ANSWER OF CLAIMANT.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE CHARLES E. WOLVERTON AND THE HONORABLE ROBERT S. BEAN, JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON, SITTING IN ADMIRALTY:

The answer of the German bark "Thielbek" to the libel of Wilhelm Wilhelmsen, owner of the steel steamship "Thode Fagelund," in a cause of collision, civil and maritime, denies, admits and alleges as follows:

ARTICLE I.

Denies any knowledge or information sufficient to form a belief as to the allegations of Articles I

and II of said libel, and therefore calls for proof of the same.

ARTICLE II.

Admits the allegations of Article III of said libel, except that the "Thielbek" is of 4350 tons register, and alleges the truth to be that she is of a gross tonnage of 2831 and a net tonnage of 2644.

ARTICLE III.

Admits the allegations of Article VI of said libel, except the allegation that the pilot in charge of the "Ocklahama" was Archie Pease, Jr., and the allegation that Isaac Turppa was asleep, which allegations the "Thielbek" denies and alleges the truth to be that the name of the pilot who was in charge of the "Ocklahama" is Roy Pease, and that Isaac Turppa was not asleep as alleged.

ARTICLE IV.

Answering Article VII, the "Thielbek" denies that shipping customarily lies anchored in the channelway at the port of Astoria, and denies that the officers of the "Thielbek" knew how shipping lying in said channelway on an incoming tide would swing to its anchors, or that they knew that the dredge "Chinook" was anchored northward of the fair channelway as alleged in said libel, or that the master of the "Thielbek" knew or observed that the "Thode Fagelund" and the dredge "Chinook" were anchored in the usual channel for outgoing vessels, or that the "Thode Fagelund" was bound seaward, or that he knew anything about the intentions or

voyage of the "Thode Fagelund" prior to the events propounded in said libel.

ARTICLE V.

Denies each and every allegation of Articles IX, X, XI, XII, XIII, XIV, XV, and XVI, except as hereinafter admitted.

ARTICLE VI.

And further answering said libel says that on Saturday night, August 23, 1913, the "Thielbek" lay at anchor at Young's River, just below Astoria, in ballast, preparatory to being towed up the Columbia and Willamette Rivers to Portland for the purpose of taking a cargo of grain from Kerr, Gifford & Company, to whom she was under charter. That she applied to The Port of Portland for a tug, and about ten-thirty o'clock that evening The Port of Portland's steamboat "Ocklahama" came alongside, but the two vessels did not commence the voyage up the river until about five minutes past three the next morning, at which time, the tide and conditions being favorable, the "Ocklahama" was by her crew lashed on the port quarter of the "Thielbek" with her stern projecting beyond the stern of the "Thielbek," and the two vessels, proceeding as one and under the sole control of the "Ocklahama," commenced their voyage upstream through the harbor at Astoria. That the night was clear, and lights and objects were easily discernible, the water still, and there was little or no wind, and the tide was just commencing to flood; that the lights required by the rules of navigation on the two vessels were

•

all set according to rule and burning brightly; a lookout was stationed on the bow of the "Thielbek," the first and third mates were on watch, and a quartermaster was stationed at the wheel, keeping the helm amidship and doing no steering, all in accordance with the orders of the pilot of the "Ocklahama," Roy Pease, who was in charge; on the "Ocklahama," Roy Pease, who was pilot, had the wheel and was in general charge of both vessels, a watchman was on duty with him in the pilot-house, and the assistant engineer was at the engines; Captain Turppa, master of the "Ocklahama," was in his bunk in the texas, a few feet aft of and adjoining the pilothouse, but was not asleep and heard the whistles hereinafter mentioned.

That the United States Government dredge "Chinook" was lying at anchor in the harbor of Astoria, with her stem near the northern edge of the ship channel, which is here from a thousand (1000) to fifteen hundred (1500) feet wide, and her stern pointing toward Astoria; the "Chinook" is about 450 feet long, and was lying diagonally across the channel; the space between her stern and the Astoria docks was, approximately, seven hundred (700) or eight hundred (800) feet, and it was through this space that ingoing or outgoing vessels had to pass.

The "Ocklahama," with the "Thielbek" in tow, having weighed anchor at Young's River about three minutes past three as aforesaid, proceeded with her tow as one vessel upstream, keeping close in

towards the Astoria docks, to-wit, about two hundred (200) feet off, and when close to Calendar Dock in the City of Astoria, the pilot of the "Ocklahama" sighted the Norwegian steamer "Thode Fagelund" beyond and over the dredge "Chinook," and evidently proceeding downstream; at this time he could see the lights of the "Thode Fagelund," but not her hull, and she was approximately from fifteen hundred (1500) to two thousand (2000) feet away; the "Ocklahama" was immediately put under a slow bell, and a few seconds thereafter the "Thode Fagelund" blew two whistles, signifying her desire to pass the "Ocklahama" and tow on her starboard hand; the "Thode Fagelund" was at this time still behind the "Chinook," showing to the "Ocklahama" her green side light and two white range lights, and was proceeding on a course diagonally across the course of the "Ocklahama" and "Thielbek," which at this time showed their red side light to the "Thode Fagelund," the "Ocklahama" and "Thielbek" being at that time on her starboard hand; the "Ocklahama" did not answer the first signal of the "Thode Fagelund," for the reason that it was apparent to the pilot of the "Ocklahama" that in a few seconds the "Thode Fagelund" would emerge from behind the "Chinook," when he would then be better able to take in the whole situation, but the helm of the "Ocklahama" was put to starboard, and she and the "Thielbek" immediately commenced to swing to port; that in a very short time, to-wit, twenty (20) or thirty (30) seconds, the "Thode

Fagelund" came into the clear from behind the stern of the "Chinook," and, showing her green light and two masthead range lights, again blew two (2) whistles, signifying her continued intention to pass to the starboard of the "Ocklahama" and tow; at this time, libelants believe and therefore say that the only side light of the "Ocklahama" and tow visible to the "Thode Fagelund" was the red light; this signal the "Ocklahama" immediately answered by two (2) whistles, signifying her assent to the passage; at or just before this exchange of signals, the engines of the "Ocklahama" were stopped, and at this exchange of signals her engines were backed half speed, and immediately thereafter full speed astern, and her helm was thrown to port, which, by reason of the reversed paddle wheel throwing the water against the rudders, threw the stern of the "Ocklahama" and "Thielbek" to the starboard and their bows to port; that the "Ocklahama" continued backing full speed from this time until the collision, and by alternately porting and steadying her helm, held the course of herself and tow for the stern of the "Chinook," leaving the whole width of the channel from the stern of the "Chinook" to the Astoria docks as room through which the "Thode Fagelund" could pass, in accordance with the signals given and received; the "Thode Fagelund," however, instead of proceeding in accordance with the signals exchanged and passing on the starboard side of the "Ocklahama" and tow, continued to alter her course more and more to her

own starboard side and in the direction of the "Ocklahama" and tow, and a short time before the collision showed her red light to the "Ocklahama" and tow; and while the "Ocklahama" and tow, in their effort to escape the oncoming "Thode Fagelund," were headed so far to their own port that they could just about clear the stern of the "Chinook," and while the "Thode Fagelund" was on a course showing her red light to the "Ocklahama" and tow, the "Thode Fagelund" and "Thielbek" collided a very short distance, to-wit, from seventy-five (75) to one hundred fifty (150) feet and slightly downstream from the stern of the "Chinook," the "Thielbek's" stem striking the port bow of the "Thode Fagelund" a few feet abaft the stem; that a danger signal was blown by the "Thode Fagelund," and one of her anchor chains was heard running out a very few seconds before the collision, but so close to the collision as to be practically simultaneous therewith. That the "Thode Fagelund" approached the channel between the stern of the "Chinook" and the Astoria docks, through which she had to pass, in such a manner that she was not under proper control, and while her officers knew that the "Ocklahama" and "Thielbek" would be coming upstream and were likely to be met in that passage.

That as a result of the collision, the bow plates of the "Thielbek" were stove in on the starboard side, and on the port side were bent and displaced so as to necessitate renewing them on both sides,

and a hole was cut on the port side of the "Thode Fagelund" from her deck to below the water line, the tug "Ocklahama" escaping without damage.

ARTICLE VII.

That the "Thielbek" was entirely under the command and control of The Port of Portland's tug "Ocklahama" and the quartermaster of the "Thielbek" kept her helm amidships without alteration during the happening of all of the events herein alleged, in accordance with the orders of the officers of the "Ocklahama," and the "Thielbek," lashed to the "Ocklahama" as aforesaid, conformed to the orders of the pilot of the "Ocklahama" in every respect.

Wherefore, the "Thielbek" prays that the libel of Wilhelm Wilhelmsen be dismissed with costs to the "Thielbek," and for such other, further and different relief as to your honors may seem meet and equitable and in accordance with the admiralty practice.

WOOD, MONTAGUE & HUNT,
C. E. S. WOOD,
ERSKINE WOOD,

Proctors for Respondent "Thielbek".

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

A. Bergmann, being duly sworn, says that he is the master of the German bark "Thielbek"; that he has read the foregoing answer and the same is true, as he verily believes.

A. BERGMANN.

Subscribed and sworn to before me this 19th day of September, 1913.

[Notarial Seal]

ERSKINE WOOD,

Notary Public in and for Oregon.

Due service of the within answer by certified copy as prescribed by law is hereby admitted at Portland, Oregon, September 19th, 1913.

W. C. BRISTOL,

Proctor for Libelant.

Due service of the within answer by certified copy as prescribed by law is hereby admitted at Portland, Oregon, September 19th, 1913.

WIRT MINOR,

Proctor for Port of Portland.

Filed September 19, 1913. A. M. Cannon, Clerk.

And afterwards, to-wit, on the 20th day of October, 1913, there was duly filed in said court, an answer of the respondent, The Port of Portland, in words and figures as follows, to-wit:

ANSWER OF THE PORT OF PORTLAND.

In the District Court of the United States in and for the District of Oregon.

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat

"Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES FOR THE DISTRICT OF ORE-
GON, SITTING IN ADMIRALTY:

The answer of The Port of Portland to the libel
of Wilhelm Wilhelmsen, owner of the steel steam-
ship "Thode Fagelund," in a cause of action, civil
and maritime, respectfully shows unto your honors:

ARTICLE I.

Respondent, The Port of Portland, admits all of
the matters and things propounded in Article I of
the libel.

ARTICLE II.

Respondent admits that at the dates and times
set forth in the libel the "Thode Fagelund" was a
steel steamship and that M. B. Hansen was the
master thereof, and that she was constructed and
built to engage upon voyages upon the high seas
with merchantable freight, but this respondent says
that it has no knowledge or information sufficient
to form a belief as to whether or not the said steam-
ship was a boat 400 feet long or of about 52 feet
beam or of about 28 feet depth of hold or with ton-
nage engross of 4352 and net 2826, or equipped with
one screw or the necessary engines, boilers or ma-
chinery or officers and crew of about thirty men or
in every respect tight, stanch, strong or seaworthy
or well tackled, appareled, manned or supplied or
was under time charter to W. R. Grace & Co. of San

Francisco, and this respondent therefore denies each of said allegations and in denying the same asks that libelant be required to make proof thereof.

ARTICLE III.

This respondent admits that at the times and dates in the libel propounded the German bark "Thielbek," of which A. Bergmann now is or lately was master, is of the port of Hamburg in the Empire of Germany and owned by Knohr & Burchard, Nfl., Neptunaus, Hamburg, Germany, and is a four-masted vessel, but this respondent says that it has no knowledge or information upon which to base or sufficient to form a belief as to whether the said vessel was of about 4350 tons register, but admits that said vessel was in ballast on an inbound voyage to the port of Portland and, at the time said libel was brought, was lying at the town of Linnton in the Willamette River discharging ballast.

ARTICLE IV.

This respondent admits all the matters and things propounded and alleged in Article IV of the libel.

ARTICLE V.

This respondent admits all the matters and things propounded and alleged in Article V of the libel.

ARTICLE VI.

In answer to Article VI of the libel this respondent shows unto your honors that at or about 10:30 o'clock p. m. on the 23rd day of August, 1913, at or near Young's Bay in the Columbia River and within

this district and the jurisdiction of this court, at the request of the captain or master of the ship "Thielbek," the stern wheel steamboat "Ocklahama" came alongside the ship "Thielbek" and made fast to the said ship for the purpose of towing the said ship, which was then at anchor, to the City of Portland, and having made fast to the said German bark or ship "Thielbek" about the hour of 3 o'clock a. m. of August 24, 1913, got under way and began to tow the German bark or ship "Thielbek"; that A. L. Pease, Jr., was the pilot on board and in charge of the steamboat "Ocklahama"; that Isaac Turppa was the master of said steamboat "Ocklahama," but at said time was off duty; that in addition to said pilot and master the steamboat "Ocklahama" was equipped with the necessary engines, boilers, machinery, officers and crew of about — men; and was, in every respect, tight, stanch, strong, well tackled, manned, appareled and supplied and was constructed and built so as to tow vessels either in ballast or loaded, between the City of Portland and lower Astoria harbor; that at about five minutes past 3 on the morning of August 24, 1913, the tide and conditions being favorable and the "Ocklahama" having been lashed by her crew to the port quarter of the "Thielbek" with her stern projecting beyond the stern of the "Thielbek," the two vessels proceeded, as one and under the control of the "Ocklahama," on their voyage upstream through the harbor at Astoria; that the night was clear and lights and objects easily discernible; that the water

was still, and the tide was just commencing to flood; that the lights required by the rules of navigation on the two vessels were all set according to rule and burning brightly, to-wit, a green light, screened according to the Rules and Regulations of Inland Navigation of the United States, on the starboard side of the "Thielbek," and a red light in like manner screened on the port side of the "Ocklahama," and two white lights (about six feet apart) on the mast of the "Ocklahama"; that a lookout was stationed on the bow of the "Thielbek," who was one of the crew of the "Thielbek"; and a quartermaster was stationed at the wheel of the "Thielbek" who was an officer of the "Thielbek"; that the helm of the "Thielbek" was put and kept amidship in accordance with the orders of the said pilot of the "Ocklahama" who was in charge; that the said pilot on the "Ocklahama" was at the wheel and was in general charge of both vessels and a watchman was on duty with him in the pilot house; that the assistant engineer of the "Ocklahama" was in charge of the engines and the master of the "Ocklahama" was in his bunk in the Texas, a few feet aft of and adjoining the pilot house, but was not asleep; that the two vessels proceeded as one on their voyage up the Columbia River on the Oregon side thereof, to a point in front of the port of Astoria about abreast of the Callender Dock, and, except as herein alleged, this respondent denies each and all the matters and things set forth in Article VI of the libel.

ARTICLE VII.

This respondent admits each and all of the matters and things alleged in Article VII of the libel, save and except that this respondent denies that the master of the steamboat "Ocklahama" or the pilot thereof knew or observed that the steamship "Thode Fagelund" was bound seaward or was fully cargo laden or would naturally proceed down the Columbia River past the port of Astoria on the outgoing flood tide on her voyage.

ARTICLE VIII.

This respondent says that it has no knowledge or information upon which to base or sufficient to warrant the belief that prior to the 24th day of August, 1913, the "Thode Fagelund" had been loaded at Portland by her charterers, W. R. Grace & Co., with a full cargo or that such cargo consisted of one-third of her deck capacity in piling and about two-thirds of her deck capacity in timbers, or that she had a full hold of dimension or specified lumber stowed below or in the 'tween decks, or that she had besides this some twenty-five tons of dynamite stored aft for a voyage from the Port of Portland in this district to Panama on the Isthmus of Darien, or was returning in ballast to the order of her charterers. This respondent admits that the respondent knew that the "Thode Fagelund" had been laden at Portland with a full cargo and that being so laden and having duly cleared, was leaving the port of Portland to arrive off the port of Astoria so that she might come to an anchor-

age off the dock or wharf of the Oregon-Washington Railroad & Navigation Company in the channelway and avail of the outgoing flood tide on the morning of Sunday for her voyage upon the high seas.

ARTICLE IX.

This respondent admits each and all of the allegations and matters propounded in Article IX of the libel, save and except that this respondent has no knowledge or information upon which to base or sufficient to form a belief that the "Thode Fagelund" was in all respects tight, staunch, strong or in good seaworthy condition or in all respects well officered, well manned, well equipped, well tackled or well supplied; and, save and except that this respondent denies that the "Thode Fagelund" had not yet gathered steerage way, and denies that the steamboat "Ocklahama" and the "Thielbek" were observed by the pilot of the "Thode Fagelund" coming full speed toward the narrow channelway between the stern of the United States Government dredge "Chinook" and the railroad wharf on the Columbia River at said point and denies that the said steamboat "Ocklahama" and the "Thielbek" were coming full speed toward said narrow channelway; and, save and except that this respondent denies that the "Ocklahama" and the "Thielbek" were navigated without prudence or in a careless or negligent way so as to crowd the fair channelway between the stern of the dredge "Chinook" and the railroad wharf, and denies that said steamboat and the bark "Thielbek" did not give the "Thode

Fagelund" clearway or distance for her passage to starboard side and clear the stern of the United States Government dredge "Chinook," and denies that the steamboat "Ocklahama" and the "Thielbek" did not answer the signals of the "Thode Fagelund" and denies that the steamboat "Ocklahama" and the "Thielbek" disregarded inland navigation rules and the duty to preserve a fairway in the channel to a fully laden vessel passing outward; and, save and except that this respondent says that it has no knowledge or information upon which to base or sufficient to form a belief that the "Ocklahama" and the "Thielbek" struck and collided with the "Thode Fagelund" at a time not more than twelve minutes after she had weighed anchor and before she had proceeded more than one thousand feet upon her voyage, and that the "Ocklahama" and the "Thielbek" were then so navigated as to strike and collide with the port bow of the "Thode Fagelund," and this respondent asks that the libelant be required to make proof of the said allegations of Article IX of its libel herein denied, whether denied absolutely or on information and belief. And in this regard this respondent sheweth unto your honors that, while the steamboat "Ocklahama," so lashed to the "Thielbek," manned, equipped and officered as herein alleged, was proceeding on the voyage up the Columbia River towing the said bark "Thielbek," at or about the hour of 3:20 on the morning of Sunday the 24th day of August, 1913, and as the said steamboat towing the said bark

"Thielbek" in Astoria harbor was passing Calendar Dock, the pilot and lookout on the steamboat "Ocklahama" saw the green side light and the two mast head lights on the port bow of the steamboat "Ocklahama," but could not see the steamer itself on account of the dredge "Chinook" being anchored on the port bow and between the steamboat "Ocklahama" and the steamer "Thode Fagelund"; that as soon as the lights of the steamer "Thode Fagelund" were observed by the pilot and lookout on the steamboat "Ocklahama," the steamboat "Ocklahama" was slowed down and proceeded under a slow bell and within a short time thereafter the pilot and lookout and other officers on the steamboat "Ocklahama" and upon the bark "Thielbek" heard two whistles from the steamer "Thode Fagelund," and thereupon the pilot on the steamboat "Ocklahama" put the helm of the steamboat "Ocklahama" hard astarboard, but did not answer the two whistles or the signal given by the steamer "Thode Fagelund" until the steamer "Thode Fagelund" came out from behind the dredge "Chinook" inasmuch as it was impossible, from the position of the dredge "Chinook" lying between the steamer "Thode Fagelund" and the steamboat "Ocklahama" and the "Thielbek" for the pilot or other officers upon the steamboat "Ocklahama" or upon the bark "Thielbek" to determine whether it was safe to pass the steamer "Thode Fagelund" to starboard; that within a few seconds thereafter the steamer "Thode Fagelund" was observed by the pilot and other officers on the steamboat "Ockla-

hama" and on the bark "Thielbek" to come out from behind the dredge "Chinook" and two whistles were then heard by the pilot on the "Ocklahama" and the other officers on the "Ocklahama" and on the bark "Thielbek" given by the steamer "Thode Fagelund," and thereupon the pilot on the steamboat "Ocklahama" answered the said two whistles by giving two short blasts on the steam whistle, as it was apparent from the position at that time of the steamer "Thode Fagelund" that she could pass the steamboat "Ocklahama" and the "Thielbek" to starboard, but it was apparent to the pilot and other officers of the steamboat "Ocklahama" that in passing the steamer "Thode Fagelund" to starboard there was imminent danger that the steamboat "Ocklahama" and the bark "Thielbek" would come into contact and collision with the dredge "Chinook," and thereupon and in order to avoid striking and colliding with the dredge "Chinook," the engines upon the steamboat "Ocklahama" were stopped and immediately thereafter the said steamboat "Ocklahama" was backed full speed on a port helm and continued to back full speed on a port helm for between three and four minutes and practically stopped the headway of the steamboat "Ocklahama" and of the bark "Thielbek," and a few seconds later the steamer "Thode Fagelund" and the bark "Thielbek" came together in such manner that the stem of the bark "Thielbek" struck and collided with the port bow of the steamer "Thode Fagelund" at and near the stem

thereof in the manner set forth in the libel and tore a large hole in the steamer "Fagelund" in her port side and a few feet from the bow, broke some of the plates and indented a number of other plates on both sides of the bark "Thielbek"; and this respondent further in this particular alleges that it is informed and believes and therefore avers that the steamer "Thode Fagelund," instead of proceeding on her course and swinging to her port, backed full speed astern and thereby caused the head of said steamer to swing to starboard, and that it is informed and believes and therefore alleges that when the engines of the steamer "Thode Fagelund" are driven full speed astern, the said steamer swings sometimes to starboard and sometimes to port, so that there is no certainty as to the course which said steamer will take when the engines are driven full speed astern and that this fact was known to the master and officers of the steamer "Thode Fagelund," but was not known to the pilot in charge of the steamer "Thode Fagelund"; that in truth and in fact when the engines of the steamer "Thode Fagelund" were driven full speed astern at and just prior to the collision with the bark "Thielbek," the course of the steamer "Thode Fagelund" was changed so that she swung to starboard and that the collision was caused wholly by reason of the fact that the engines of the steamer "Thode Fagelund" were driven full speed astern and that the course of the said steamer was thereby changed so that the stem of said steamer was swung to

starboard and said steamer was made to proceed on a course entirely different from that on which she was proceeding at the time the passing signals were given and at the time that she was observed by the pilot on board the "Ocklahama" and the officers on the steamboat "Ocklahama" and on the "Thielbek," and this respondent is informed and believes and therefore alleges that had the steamer "Thode Fagelund" continued upon the course upon which she was proceeding at the time that the passing signals were given and answered, the steamer "Thode Fagelund" would have passed safely to starboard of the steamboat "Ocklahama" and the bark "Thielbek." And this respondent further avers and it is informed and believes that everything was done by the pilot on the steamboat "Ocklahama" and by the officers upon the said steamboat and upon the bark "Thielbek" to avoid a collision with the steamer "Thode Fagelund," so that there was imminent danger that the steamboat "Ocklahama" and the bark "Thielbek" would be brought in collision with the dredge "Chinook."

ARTICLE X.

This respondent denies each and all of the matters and things set forth and propounded in Article X of the libel, save and except that this respondent admits that the bark "Thielbek" did collide with, strike and damage the "Thode Fagelund."

ARTICLE XI.

This respondent says that it has no knowledge or information upon which to base a belief or suffi-

cient to form a belief as to the matters and things set forth and propounded in Article XI of the libel, and it therefore denies the matters and things set forth in Article XI of the libel and asks that libelant be required to make proof thereof.

ARTICLE XII.

This respondent says that it has no knowledge or information sufficient to form a belief or on which to base a belief as to the matters and things propounded and set forth in Article XII of the libel, and it therefore denies the matters and things set forth in Article XII of the libel and asks that the libelant be required to make proof thereof.

ARTICLE XIII.

This respondent denies that there are no public docks in the port of Portland or open berths for foreign vessels generally arranged in this port and as to the other matters and things set forth in Article XIII of the libel, this respondent alleges that it has no knowledge or information sufficient to form a belief and it therefore denies the same and asks that the libelant be required to make proof thereof.

ARTICLE XIV.

This respondent avers that it has no knowledge or information on which to form a belief or sufficient to form a belief regarding the matters and things set forth and propounded in Article XIV of the libel, and it therefore denies the matters and things set forth in Article XIV of the libel and

prays that libelant be required to make proof thereof.

ARTICLE XV.

This respondent denies the matters and things set forth in Article XV of the libel.

ARTICLE XVI.

This respondent admits all of the matters and things propounded in Article XVI of the libel.

For a further answer to the libel, this respondent respectfully shows unto your honors :

ARTICLE I.

This respondent is a municipal corporation, duly created, organized and existing under and by virtue of a certain Act of the Legislative Assembly of the State of Oregon entitled "An act to establish and incorporate 'The Port of Portland,' and to provide for the improvement of the Willamette and Columbia Rivers in said port and between said port and the sea," filed in the office of the Secretary of State February 18, 1891, and under and by virtue of sundry amendments of said act filed in the office of the Secretary of State respectively February 10, 1893, February 18, 1899, March 1, 1901, February 23, 1903, and February 26, 1903, and under and by virtue of an amendment to the said act of the Legislative Assembly proposed by initiative petition in 1908 and duly adopted by the legal voters within the corporate limits of the port of Portland at an election held on the ——— day of June, 1908, and under and by virtue of said act and the amendments thereof, and particularly and by virtue of the said

amendment of June, 1908, The Port of Portland is authorized and empowered, among other things:

* * * "To purchase, lease, control and operate steam tug-boats and steam and sail pilot-boats upon such rivers and upon the Columbia bar pilotage grounds, and to collect charges from vessels employing such tugs so operated and for pilotage services rendered by employes of said The Port of Portland, and said The Port of Portland shall have the right to claim and collect salvage for services rendered to vessels in distress in the same manner as a natural person. The charges for towage and pilotage shall be fixed by the Board of Commissioners of The Port of Portland and shall be public and published to the world. The charges for towage of sailing vessels shall include the services of such pilots as may be supplied by The Port of Portland. The charges for pilots supplied by The Port of Portland to steam vessels shall be fixed by its Board of Commissioners, but shall in no respect exceed the charges fixed by the State of Oregon for pilots upon the bar pilotage grounds and upon the river pilotage grounds upon the Columbia and Willamette Rivers."

ARTICLE II.

Section 3 of the said amendment of June, 1908, provides:

"If a vessel or cargo, while being towed by a vessel owned or operated by The Port of Portland, or while under the charge of a pilot employe of The Port of Portland, is injured or lost by reason of the

fault of such tug, or the negligence or incompetence of such pilot, The Port of Portland shall not be liable for any loss or injury thereof in excess of ten thousand dollars."

ARTICLE III.

On the 23rd day of August, 1913, and at all times since said date, and for a long time prior to said date, one A. L. Pease, Jr., was a pilot duly licensed in pursuance with the acts of Congress of the United States of America and the pilot rules adopted by the Department of Commerce and Labor of the United States, and, by his license, was authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds and classes on the Willamette and Columbia Rivers, and in particular on the river pilotage ground; that is to say from the lowermost dock or wharf at the port of Astoria to the head of navigation on the Columbia and Willamette Rivers and their tributaries, and also to tow steamers, sailing vessels and water craft of all kinds and classes in the limits aforesaid, and said A. L. Pease, Jr., at said times was duly licensed as a pilot under the laws of the State of Oregon and particularly the laws regulating pilotage on the Columbia River bar and on the Columbia and Willamette Rivers.

On or about the 23rd day of August, 1913, the master of the German bark "Thielbek" applied to the respondent to supply a tow boat and a pilot to tow the said bark from its anchorage at or near Young's Bay in the port of Astoria to the City of

Portland. Accordingly, and in discharge of its duty as a public corporation, this respondent, then being the owner of and operating the steamboat "Ocklahama," of which steamboat Isaac Turppa was master and the said A. L. Pease, Jr., was pilot and which steamboat was then and there tight, stanch, strong and in good seaworthy condition and in all respects well officered, well manned, well equipped, well tackled and well supplied, sent the "Ocklahama," so officered, manned, equipped, tackled and supplied, on the 23rd day of August, 1913, to tow and pilot the said bark "Thielbek" from the point aforesaid where the said bark was at anchor to the City of Portland, and this respondent is informed and believes and therefore alleges that the said steamboat "Ocklahama" so officered, manned, equipped, tackled and supplied and then and there carefully and prudently navigated arrived alongside of the said bark at her anchorage at the hour of 10:30 p. m. of the 23rd day of August, 1913, but the time and tide not being suitable, lay alongside of the said bark "Thielbek" until the hour of about 3 a. m. of August 24, 1913, at which time the officers and crew of the steamboat "Ocklahama" lashed the steamboat "Ocklahama" to the bark "Thielbek" on the port quarter thereof in the ordinary and customary manner and, after having put out the lights according to the pilot rules of the Department of Commerce and Labor for inland waters; that is to say, a green light on the starboard side of the bark "Thielbek" and a red light on the port side of the

steamboat "Ocklahama," both lights so screened that neither the green nor the red light would show across the bow of the bark "Thielbek"; and also white lights on the mast of the steamboat "Ocklahama," indicating that she had a tow; that the steamboat "Ocklahama" and the bark "Thielbek" so lashed together proceeded on their voyage as one vessel up the Columbia River. And this respondent is informed and believes and therefore alleges that at about 3:20 o'clock in the morning of August 24, 1913, as the steamboat "Ocklahama" and the "Thielbek" so lashed together proceeded on their voyage up the river and were passing Calender Dock in Astoria harbor, the said A. L. Pease, Jr., pilot upon the "Ocklahama," being then in charge and directing the navigation of the steamboat and her tow, saw the white lights of the dredge "Chinook," at anchor in the harbor at Astoria and swinging on the tide in such manner that the stern of said dredge was pointed toward the Astoria shore of the Columbia River and soon thereafter the said pilot saw over the dredge "Chinook" the green light and two mast head lights of a steamer on the port bow of the "Ocklahama," but did not and could not see the steamer itself on account of the dredge "Chinook" being anchored on the port bow of the "Ocklahama" and between the steamer, the green light of which was seen, and the steamboat "Ocklahama"; that as soon as the said pilot saw the lights of the steamer over the dredge "Chinook" the steamboat "Ocklahama" was put under a slow

bell and that very soon thereafter the said pilot heard two short blasts of the steam whistle blown from the steamer, the lights of which were seen beyond the dredge "Chinook" and which afterwards proved to be the steamer "Thode Fagelund," but that, by reason of the fact that the steamer "Thode Fagelund" was at that time beginning to round the stern of the dredge "Chinook" the said pilot, A. L. Pease, Jr., was unable to say with certainty whether a safe passage could be made to starboard and that therefore no answer was given to the said two whistles until the steamer "Thode Fagelund" should come out from behind the dredge "Chinook" and until the said pilot could determine whether the steamer "Thode Fagelund" could pass safely to starboard of the steamboat "Ocklahama" and the bark "Thielbek"; but that the said pilot at once put the helm of the steamboat "Ocklahama" hard astarboard in such manner that the steamboat "Ocklahama" with her tow swung to port; that as soon as the "Thode Fagelund" came from behind the dredge "Chinook," and as soon as her position could be ascertained and was ascertained by the said pilot, A. L. Pease, Jr., the said pilot heard two short blasts of the steam whistle blown from the steamer "Thode Fagelund" and immediately answered the same by blowing two short blasts of the steam whistle from the steamboat "Ocklahama"; that said pilot having so ascertained the position of the steamer "Thode Fagelund" and her course, deemed that the said steamer "Thode Fagelund" could pass

safely on the starboard side of the steamboat "Ocklahama" and her tow, the bark "Thielbek"; that at said time the "Ocklahama" was approaching the dredge "Chinook" and that said pilot, A. L. Pease, Jr., believing that there was danger, if the steamboat "Ocklahama" and her tow, the bark "Thielbek," should continue on the course upon which they were then moving, of their running upon and colliding with the said dredge "Chinook," thereupon and for the purpose of avoiding a collision with the dredge "Chinook" and for this purpose only, at once stopped the engines of the steamboat "Ocklahama" and backed full speed astern on a port helm; that at said time the pilot upon the "Ocklahama" believed that the said steamer "Thode Fagelund," pursuing the course which she was pursuing at the time she came from behind the dredge "Chinook" and her position and course were ascertained by the said pilot, would have passed safely to starboard of the steamboat "Ocklahama" and of her tow, the bark "Thielbek," but that the steamer "Thode Fagelund," instead of pursuing her course, or swinging to her port, began to swing to her starboard and continued to swing to her starboard until the red light of the steamer "Thode Fagelund" came in view of the "Ocklahama"; that the steamboat "Ocklahama" with her tow continued to back full speed astern for about three minutes so that most of the headway of the said steamboat and of the bark "Thielbek" had been stopped, and during said time the said steamboat "Ockla-

hama" with her said tow continued to swing to her port; that soon after the said signal had been given by the "Thode Fagelund" and answered by the "Ocklahama" and while the steamboat "Ocklahama" was backing full speed astern as aforesaid, the steamer "Thode Fagelund" dropped her port anchor and almost immediately thereafter the said steamer and the bark "Thielbek" came together head-on, tearing a large hole in the steamer in her port side a few feet from the bow and driving the anchor of the steamer through some plates and bending a number of other plates on both sides of the bow of the bark "Thielbek"; that at all of said times the said A. L. Pease, Jr., was a duly licensed, competent and experienced pilot and the several acts hereinbefore set forth, were done by the said pilot with intent to avoid and were well adapted to avoid a collision with the steamer "Thode Fagelund" and to enable the said steamboat and the bark "Thielbek" to pass to starboard of the said steamer "Thode Fagelund"; that at all of said times, and particularly at and before the time of said collision the steamboat "Ocklahama" was skillfully and prudently navigated and everything was done which could be done to avoid a collision with the steamer "Thode Fagelund."

ARTICLE IV.

On the 23rd day of August, 1913, and at all times since said date, one M. Nolan was a pilot duly licensed as such under the acts of Congress of the United States of America and in pursuance of the

pilot rules adopted by the Department of Commerce and Labor of the United States, and by his license was authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds and classes on the Columbia River and over the bar at the mouth of the Columbia River to the open seas, and, as such pilot, was in particular authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds over the bar pilotage ground; that is to say, from the uppermost dock or wharf at the port of Astoria or Knappton to the open seas, at least ten miles beyond the uttermost buoy, and was authorized and empowered to pilot steamers, such as the "Thode Fagelund" at and between the point on the Columbia River at which the said steamer "Thode Fagelund" came to anchor on the evening of said day, to the open seas, and the said M. Nolan at said times was also duly licensed as a pilot under the laws of the State of Oregon and was authorized and empowered, under said laws, to pilot steamers and all kinds of water craft on the Columbia River and over the bar at the mouth of said river to the open seas, and at said time and at all the times since that time and for a long time prior to said date, the said M. Nolan was employed by this respondent as a pilot on the Columbia River and over the bar at the mouth of said river and was at all said times a competent and experienced pilot.

On or about the 23rd day of August, 1913, the master of the steamer "Thode Fagelund" applied

to the respondent to supply a pilot to pilot the said steamer "Thode Fagelund" over the bar pilotage ground, and particularly from the place where the "Thode Fagelund" was at anchor on the evening of the 23rd day of August, 1913, down the Columbia River and over the bar at the mouth of said river to the open sea. Accordingly and in discharge of its duties as a public corporation, this respondent supplied as a pilot for the "Thode Fagelund," in pursuance of said request, the said M. Nolan, the said M. Nolan being at said time a pilot duly licensed, competent and experienced as aforesaid, and this respondent avers that it is informed and believes and therefore alleges that on the 24th day of August, 1913, at or about the hour of three o'clock in the morning the steamer "Thode Fagelund," having the said pilot M. Nolan in charge and directing her navigation, weighed anchor from a point in the Columbia River off and opposite the dock of the Oregon-Washington Railroad & Navigation Company in Astoria harbor, and, under the direction of said M. Nolan as pilot started ahead under a slow bell and continued to proceed under said slow bell for about five minutes and then increased its speed to half speed ahead and continued to proceed at said half speed ahead until within about four hundred feet of and above the dredge "Chinook," a vessel about 450 feet in length, the property of the United States at said time, anchored in the Columbia River at a point off and about opposite the middle of the said dock and lying directly across the

channel of said river, leaving the channel so obscured that one on a vessel in the channel of said river above where the said dredge was anchored could not see a vessel coming up the channel of said river below the point where the said dredge was anchored; that when the "Thode Fagelund" had arrived on her course at a point in said channel about 400 feet from and above the said dredge "Chinook," which was then swinging to flood tide with her stern toward the Astoria side of the channel, the said Nolan, pilot as aforesaid, being then on watch and directing the navigation of the said steamer, saw a sailing vessel under tow almost head-on and about one-quarter of a point on the starboard bow of the said steamer, which sailing vessel was afterwards ascertained to be the bark "Thielbek," in tow of the steamboat "Ocklahama"; that when the said Nolan saw the said sailing vessel under tow, he blew two short blasts of the steam whistle on the said steamer, signifying his intention to pass to starboard of the said sailing vessel under tow, he, the said Nolan, believing at said time that the said steamer "Thode Fagelund" could not pass safely to port of the said bark "Thielbek" and the steamboat "Ocklahama" and could pass safely to starboard of said bark "Thielbek" and the said steamboat "Ocklahama" by reason of the course which the said "Thode Fagelund" was then pursuing and by reason of the position of the said dredge "Chinook"; that no answer to the said two blasts was heard on the steamer "Thode Fagelund";

that thereupon the said M. Nolan stopped the engines of the steamer "Thode Fagelund" and having then come out from behind the stern of the dredge "Chinook" and deeming it safe to pass to starboard of the said sailing vessel and of the said steamboat "Ocklahama" and not safe to pass to port of the said bark and the said steamboat, the said Nolan gave two short blasts of the steam whistle of the "Thode Fagelund" and immediately thereafter heard two short blasts in answer thereto given by the steamboat "Ocklahama"; that immediately after hearing the said two short blasts from the steamboat "Ocklahama," the steamer "Thode Fagelund" having then come from behind the dredge "Chinook," so that the position and the course of the bark "Thielbek" and of the steamboat "Ocklahama" could be more plainly seen, apprehended that there was imminent danger of a collision between said steamer "Thode Fagelund" and the said sailing vessel, and that thereupon the said Nolan at once reversed the engines of the "Thode Fagelund" and drove the same full speed astern in order to retard the headway of the steamer "Thode Fagelund," so that the bark "Thielbek" and the steamboat "Ocklahama" might have time to pass on their course out of danger of a collision with the said steamer "Thode Fagelund" and immediately gave four short blasts of the steam whistle of the "Thode Fagelund" and at once and to further retard the headway of the "Thode Fagelund," dropped the port anchor of the "Thode Fagelund" and again gave

four short blasts of the steam whistle of the "Thode Fagelund"; that each of said acts on the part of the pilot Nolan was done promptly, for the purpose of and was adapted to avoid a collision between the bark "Thielbek" and the steamboat "Ocklahama" and the said steamer "Thode Fagelund"; but this respondent further alleges that it is informed and believes and therefore avers that the steamer "Thode Fagelund" was at said time not in a good seaworthy condition, or well officered, well manned or well equipped or well tackled or carefully or prudently navigated in this, that the steering geer and the screw or propeller of the steamer "Thode Fagelund" were out of order or defective so that the said steamer "Thode Fagelund" did not steer well or answer her helm and so that said steamer, when her engines were driven full speed astern, did not steer with regularity or certainty, but sometimes swung to starboard when the steamer should have swung to port, and sometimes swung to port when the steamer should have swung to starboard, and that these defects in said steamer were known to the master and officers thereof but were not known to the respondent or the said Nolan and could not have been discovered by the respondent or the said Nolan by the exercise of any care or diligence, and respondent avers that the accident or collision complained of and the damages thereby sustained were due to the fact that the steamer "Thode Fagelund" was not at said time in good seaworthy condition or well officered or well manned

or well equipped or well tackled, and particularly to the fact that the steering geer and the screw or propeller of the said steamer "Thode Fagelund" were out of order and defective, and were not due to any negligence nor want of care on the part of this respondent or of its agents, servants or employes, and particularly were not due to any want of skill or care on the part of the said Nolan and were not due to any want of care or experience on the part of the said A. L. Pease, Jr., the pilot who at that time had charge of the navigation of the steamboat "Ocklahama" and her tow, the bark "Thielbek," and were not due to any want of prudence or care in the navigation of the steamboat "Ocklahama" and her tow, the bark "Thielbek."

For a further answer, this respondent humbly showeth unto your honors :

ARTICLE I.

This respondent, as hereinbefore set forth, is a public or municipal corporation duly incorporated under the laws of the State of Oregon, with powers as hereinbefore in this answer set forth and it is its duty, as such public corporation, among other things, to supply pilots to pilot steamers and water craft of all kinds from the high seas over the Columbia River bar and up the Columbia and Willamette Rivers to the City of Portland, and in discharge of its said duty as a public or municipal corporation, and not otherwise, this respondent, upon the request of the steamer "Thode Fagelund," as hereinbefore alleged, supplied M. Nolan as a pilot to pilot

the steamer "Thode Fagelund" over the bar pilotage ground, as in this answer more particularly defined.

ARTICLE II.

At all the times set forth in the libel, the said M. Nolan had been examined by the Board of Supervising Inspectors of Hulls and Boilers for the First District of the United States in pursuance of Rule 5 of the General Rules and Regulations prescribed by the Board of Supervising Inspectors as amended January, 1912, and as further amended by the action of the Executive Committee of the Board of Supervising Inspectors on April 26, 1912, which rules and regulations are issued by the Department of Commerce and Labor of the United States and are approved by the Secretary of Commerce and Labor of the United States, and at all said times held a license duly issued to him by said Board to act as master, mate or pilot on the waters of the Columbia and Willamette Rivers and on the bar at the mouth of the Columbia River to the open seas at least ten miles beyond the uttermost buoy, and was acting as such pilot at all the times the matters alleged in the libel are alleged to have occurred.

ARTICLE III.

Respondent further sheweth unto your honors that it is provided by the laws of the State of Oregon, among other things, as follows:

The pilot commissioners for the bar and river pilot grounds shall be appointed by the governor for the term of two years each.

The pilot commissioners shall organize as a board, to be known as "the board of pilot commissioners," by the election of a president and secretary, who shall hold their offices as follows: The president during his term as commissioner, and the secretary during the pleasure of the board.

The board has the power and it is its duty under this act to maintain a sufficient number of pilots upon the bar and river pilot ground to meet the demands of commerce, and to exercise a general supervision over the subject of pilotage upon said grounds, and to that end may do and provide as follows:

1. Examine and license pilots for said pilot grounds.
2. Hear and determine all complaints against any of said pilots.
3. Make and alter rules for the government of such pilots and the maintenance of an efficient pilot service on the pilot grounds aforesaid not inconsistent with the laws of this state or the United States, and to enforce the same by any lawful and convenient means, including the suspension or removal of any such pilot and the imposition on him of a penalty of not to exceed \$250 for any violation thereof.

An application for a pilot's license must be made in writing to the board, stating briefly the applicant's name, place of birth, age and experience as a navigator and pilot, and if,

upon careful examination, such applicant is found worthy and qualified as herein provided, he shall be licensed for the term of one year.

No person shall be licensed as a pilot unless he is an American citizen of the age of twenty-one years at least, of temperate habits, and good moral character; nor unless he possesses the requisite skill and experience as a navigator and pilot, together with practical knowledge of the currents, tides, soundings, bearings and distances of the several shoals, rocks, bars, points of landings, lights and fog signals of or pertaining to the navigation of the pilot ground for which he applies for a license to act as pilot.

Before receiving his license, a pilot must deliver to the secretary an official undertaking, in the sum of \$5,000, signed by himself and two sureties, and approved by the president of the board, which undertaking shall be substantially in the following form: "Whereas, A. B. on, 19.., was duly licensed as a pilot for the bar pilot ground (or the river pilot ground, as the case may be), he, the said A. B. for himself, and C. D. and E. F. as his sureties, do hereby undertake that if the said A. B. shall fail or neglect to faithfully and diligently perform his duties as such pilot, then we or either of us will pay to the State of Oregon, for the use of whom it may concern, the amount of all

damage or loss caused by such neglect or failure, not exceeding \$5,000.

A pilot license shall be issued in the name of the State of Oregon and contain a designation of the pilot ground for which it is intended, and the rates of pilotage allowed thereon. Said license must be signed by the president of the board and countersigned by the secretary.

If a vessel or her cargo which is under the charge of a pilot is injured or lost, by reason of the negligence or incompetency of such pilot, he and his sureties in his official undertaking are liable to the parties interested for the damage caused thereby.

A pilot licensed under this act is authorized to take charge of any seagoing vessel over one hundred tons of burden, not then in charge of such a pilot, anywhere upon the pilot ground for which he is licensed, and to navigate her upon and over the same, and demand and receive therefor the compensation allowed by law.

ARTICLE IV.

In pursuance of the laws of the State of Oregon above set forth, and prior to all the times mentioned in the libel, the said Nolan had made application for a pilot's license and had appeared before the pilot commissioners and had been carefully examined by said commissioners and found worthy and qualified and had been licensed by said pilot commissioners and was empowered thereby to pilot vessels over the bar pilot grounds as in this answer

before defined and was a pilot in good standing, experienced and competent.

ARTICLE V.

This respondent further showeth unto your honors that, in pursuance of the powers granted it by law as in this answer more particularly set forth, it is a duty of this respondent to purchase, lease, control and operate steamtugs upon the Willamette and Columbia Rivers and upon the Columbia bar pilot ground and to furnish such steamtugs, together with a competent and experienced pilot for towing and piloting vessels from the high seas over the Columbia bar pilot grounds and on the Columbia and Willamette Rivers between the City of Portland and the high seas and, in pursuance of its said duty and not otherwise, this respondent at the request of the master of the bark "Thielbek" on the 23rd day of August, 1913, furnished the steamboat "Ocklahama" duly and fully officered, manned, equipped and supplied and in all respects suitable and fit to tow and pilot the bark "Thielbek" from the point where the bark "Thielbek" was anchored on the evening of the 23rd day of August, 1913, up the Columbia and Willamette Rivers to the City of Portland; that A. L. Pease, Jr., was a pilot at said times and at all the times mentioned in the libel, upon the steamboat "Ocklahama" and had been duly licensed to act as such pilot after an examination by the Board of Local Supervising Inspectors of the United States for the First District under and in pursuance of Rule 5 of the General Rules and

Regulations prescribed by the Board of Supervising Inspectors as amended January, 1912, and as further amended by action of Executive Committee of the Board of Supervising Inspectors on April 26, 1912, which General Rules and Regulations and the amendment thereof were approved by the Secretary of Commerce and Labor of the United States and a license had been by said Board duly issued to him to act as master, mate or pilot on the waters of the Willamette and Columbia Rivers and at all the places mentioned in the libel, and was such pilot at the times the matters alleged in the libel are alleged to have occurred.

ARTICLE VI.

The said A. L. Pease, Jr., had also made application for a license to the pilot commissioners for the bar and river pilot ground as defined by the statutes of the State of Oregon hereinbefore set forth and had been duly examined by the said board and been found worthy and qualified, as provided by the laws of the State of Oregon, and a license had been issued to him as such pilot and as such pilot had power and authority and was competent and qualified to pilot steamboats and to direct the operation of steamboats in towing barks, ships and vessels of all kinds on the Willamette and Columbia Rivers and particularly at the places mentioned in the libel, and was a pilot in good standing and experienced and competent.

ARTICLE VII.

By reason of the several matters above alleged, respondent avers that respondent is not liable for any of the matters set forth in the libel and therein complained of.

Wherefore this respondent prays that the libel be dismissed as to this respondent and that it have and recover of and from libelants its costs and disbursements, and this respondent will ever pray, etc.

TEAL, MINOR & WINFREE,
R. MACVEAGH,

Proctors for Respondent, The Port of Portland.

UNITED STATES OF AMERICA, } ss.
District of Oregon.

S. M. Mears, being first duly sworn, deposes and says: That he is chairman of the Commissioners of The Port of Portland, respondent in the above entitled cause and makes this affidavit for and on behalf of The Port of Portland; that he has read the foregoing answer and the same is true of his own knowledge, except as to such matters as are therein alleged on information and belief, and as to such matters he believes the same to be true.

S. M. MEARS.

Subscribed and sworn to before me this 20th day of October, 1913.

[Seal]

L. G. ROBERTS,
Notary Public for Oregon.

Service of the within answer and receipt of a copy is hereby admitted this 20th day of October, 1913.

WM. C. BRISTOL,
Proctors for Libelant.

Filed October 20, 1913. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 17th day of December, 1913, there was duly filed in said court, exceptions to the answer of The Port of Portland, in words and figures as follows, to-wit:

EXCEPTIONS TO ANSWERS OF PORT OF
PORTLAND.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSEN, owner of the steel
steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE, THE DISTRICT JUDGES IN AND FOR
THE DISTRICT OF OREGON, CHARLES E. WOLVER-
TON AND ROBERT S. BEAN, IN ADMIRALTY SITTING:

The exceptions of Wilhelm Wilhelmsen to the
answer of The Port of Portland preferred herein
doth respectfully show, allege and represent:

FIRST EXCEPTION:

That so much of the answer of The Port of Port-
land as is contained within "Article II" thereof,
lines 28 to 31, page 12, and lines 1 to 3 both in-
clusive, of page 13 of said answer, is imperfect,
insufficient and not matter of fact constituting an
answer to the libel in this cause.

SECOND EXCEPTION:

That if thereby it is intended to plead in said
answer that by the laws of the State of Oregon there
is a limitation of liability to and in favor of The
Port of Portland in a sum not greater than ten
thousand dollars, then such pleading is insufficient
to constitute any answer to the libel, is contrary to
maritime law and against the statutes of the United
States in such cases made and provided conferring
exclusive jurisdiction upon the district courts of
the United States in said matters.

THIRD EXCEPTION:

That Section 6108 of Volume III of Lord's Ore-
gon Laws, referred to in said answer as the third
section of the Amendment of June, 1908, is insuffi-
cient to give or grant to The Port of Portland any
privileges or immunity different from that under
the maritime law of the United States accorded to

all persons in similar circumstances and is a special privilege and immunity limiting the district courts of the United States in the exercise of their jurisdiction in admiralty in passing a decree in accordance with the rules of the maritime law for the full consequences of any fault, neglect or omission or other act committed by The Port of Portland in any case arising before it.

FOURTH EXCEPTION:

That The Port of Portland in conducting a pilotage and towage business is not exercising powers and duties imposed upon it as a mere agency of the State for general public purposes, but is actually conducting an individual enterprise for profit, for it undertakes to supply shipping, tug service and pilotage service in the same manner that a private corporation or individual engaged in the same business might or could do; and The Port of Portland controls and claims the right to direct and supervise all of the towage and pilotage upon the Columbia River.

FIFTH EXCEPTION:

If it is to be claimed for the said part of said answer that there can be no recovery against The Port of Portland in excess of the sum of ten thousand dollars, even if the entire fault for the collision at bar was found to lie with it, then the said matter contained in said answer is against public policy and an unlawful discrimination against shipping coming into the State of Oregon.

SIXTH EXCEPTION:

That in accordance with the maritime law a suit against a tug for damages by collision arises out of the wrong done by the tug and because of a maritime tort committed, while a suit by the owner of a tow against her tug arises out of the want of ordinary care for which the tug is responsible and is likewise a maritime tort, and the matters and things set forth in said part of said answer are therefore immaterial, imperfect and irrelevant to any issue that can be competently made under the maritime law in the trial of this cause.

SEVENTH EXCEPTION:

That in accordance with the admiralty and maritime jurisdiction there has developed a rule for the division of damages enforced by the district courts and if the matter in said answer be allowed to stand, the rule for the division of damages as now fixed in said courts would be modified and the said courts rendered unable to enforce said rule.

EIGHTH EXCEPTION:

The jurisdiction of the courts of the United States is independent of State legislation and cannot be impaired or diminished by the statutes of the several States in any way whatsoever, and so it is, if the matter pleaded in said part of said answer is allowed to stand, the legislation of the State of Oregon is given a paramount effect to the maritime law and the acts of Congress and the jurisdiction of this court interfered with accordingly.

NINTH EXCEPTION:

That is is not competent for the State of Oregon to pass any act that has the effect of creating a condition or result such as is claimed in the answer of The Port of Portland that does not apply to shipping in every port of the world.

TENTH EXCEPTION:

That the ships involved in the collision and in the several cases in this court depending thereon are all foreign vessels and not domestic ships of the State of Oregon, and to them, to-wit, ships belonging to the Kingdom of Norway and to the Empire of Germany, the laws of the State of Oregon have no force or effect, and so it is not competent or material or sufficient for The Port of Portland to plead the same in their said answer.

ELEVENTH EXCEPTION:

That all of said answer, commencing on page 22 and consisting of Articles I, II and III, pages 22, 23 and 24 of said answer, does not constitute matter sufficient in maritime law to be a defense to the libel herein.

TWELFTH EXCEPTION:

That "Article VII" on page 26 of said answer is a legal conclusion and not a fact and constitutes no defense to the libel herein.

THIRTEENTH EXCEPTION:

That this court has held in the case of Grace & Company, number 6129 in this court, against the "Thielbek" and The Port of Portland, that the

matters and things pleaded in the answer with respect to said last cited portion of said answer, that The Port of Portland could be held liable for the negligence or incompetence of its employes regardless of whether they were licensed by the State authorities or not, and so it is that the matters and things in said answer are not sufficient to constitute a defense to the libel herein.

Wherefore, it is prayed of Your Honors on consideration of the foregoing exceptions that the matters and things in said answer affected thereby be stricken out and expunged from the record and The Port of Portland held to the issues otherwise made on the record without regard to the matters so excepted to as set forth in said answer.

W. C. BRISTOL,
Proctor for Libelant.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within Exceptions is hereby accepted in Multnomah County, Oregon, this 17th day of December, 1913, by receiving a copy thereof, duly certified to as such by W. C. Bristol, Proctor for Libelant.

TEAL, MINOR & WINFREE,
Proctors for Port of Portland.

ERSKINE WOOD,
Of Proctors for Thielbek.

Filed December 17, 1913. A. M. Cannon, Clerk.

And afterwards, to-wit, on the 23rd day of February, 1914, there was duly filed in said court, an Opinion on Exceptions to Answer of Port of Portland, in words and figures as follows, to-wit:

OPINION ON EXCEPTIONS TO ANSWER OF
PORT OF PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

No. 6111.

WILHELMOSEN

v.

THIELBEK.

No. 6116.

KNOHR & BURCHARD

v.

THODE FAGELUND.

Wood, Montague & Hunt and W. C. Bristol
for Libelants.

W. Minor for Port of Portland.

MEMORANDUM BY

BEAN, Judge, on Exceptions to Answer of Port of
Portland.

On August 24, 1913, a collision occurred in the harbor of Astoria between the German bark "Thielbek," in tow of a tug belonging to The Port of Portland, and the Norwegian steamer "Thode Fagelund," in charge of a pilot belonging to such Port. The owner of the "Fagelund" libeled the "Thielbek" *in rem* and The Port of Portland *in personam* to recover \$125,000 damages, alleged to have been due to the fault of the "Thielbek" and her tow. And the

owners of the "Thielbek" libeled the "Fagelund" *in rem* and The Port of Portland *in personam* to recover \$23,500, alleged to be the damages suffered by her, due it is charged, to the negligence of the "Fagelund" and her pilot.

The Port of Portland is a municipal corporation, organized and existing under a law of the State, and authorized, among other things, to establish and maintain an efficient towage and pilotage service on the Willamette and Columbia Rivers between the City of Portland and the open sea, and to that end to purchase, lease, control and operate steam tug boats and steam and sail pilot boats, and employ and furnish pilots, and to collect charges for pilotage and towage. Lord's Oregon Laws, Sec. 6106. It has answered the libel in each of the cases referred to, alleging, among other things, that the law under which it is organized provides that its liability for an injury to a vessel while being towed by one of its tugs, or in charge of one of its pilots, due to the fault of the tug or the negligence or incompetence of the pilot, is limited to \$10,000. Lord's Oregon Laws, Sec. 6108. Exceptions have been filed to the answers on the ground that the provision of the statute limiting liability is not binding on a court of admiralty.

That The Port of Portland is liable for a maritime injury due to the fault of its tow boat or the negligence of its pilot is settled in this circuit. *United States v. Port of Portland*, 147 Fed. 865; *Port of Portland v. United States*, 176 Fed. 866.

But whether the state statute limiting such liability to a sum not exceeding \$10,000 is binding on a court of admiralty is the question now presented. I think it is ruled by the decision of the Supreme Court in *Workman v. New York*, 179 U. S. 552. That was a libel against the City of New York *in personam* to recover damages to a vessel by being run into by a fire boat of the city while it was entering a slip for the purpose of getting in a position to aid in putting out the fire in a warehouse near the slip bulkhead. The District and Circuit Court of Appeals proceeded on the assumption that the local law controlled, the former holding that the city was liable, 63 Fed. 298, and the latter that it was not, 67 Fed. 247. But on certiorari the Supreme Court held that the question must be decided by the general admiralty and not the local law; that the local law or decisions of a state cannot as a matter of authority abrogate maritime law; that when the relation of master and servant exists, an owner of an offending vessel committing a maritime tort is responsible under the rule of *respondeat superior*; that there is no limitation taking municipal corporations out of reach of the process of a court of admiralty, and that it must answer for a maritime tort, regardless of the capacity in which its agents were acting at the time, although under the local law it would not be liable. The effect of the decision, in short, is that courts of admiralty will afford redress for an injury committed by a vessel where the subject-matter is within the cognizance of such courts

and where the wrong-doer is amenable to its process, although relief is afforded by the local laws, and that "State laws or decisions cannot deprive an individual of a right of recovery for a maritime wrong which, under the general principles of the admiralty law, he undoubtedly possessed," nor can they "destroy the symmetry and efficiency of that law by engrafting therein a principle which violates the imperative command of such law that admiralty courts must administer redress for every maritime wrong in every case where they have jurisdictional power over the person by whom the wrong has been committed."

If, as held in this case, state laws and decisions cannot exonerate a municipality owning an offending vessel from liability in admiralty for a tort committed by such vessel, it would seem logically to follow that such a law limiting the amount of recovery and thus affecting the relief to be granted is not binding on an admiralty court, where the wrong-doer is subject to the jurisdiction of such court and the proceeding is in accordance with the maritime law.

Exceptions will therefore be allowed.

Filed February 23, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on Monday, the 23d day of February, 1914, the same being the 94th judicial day of the regular November Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER SUSTAINING EXCEPTIONS TO ANSWER OF PORT OF PORTLAND.

In the District Court of the United States for the District of Oregon.

No. 6111.

February 23, 1914.

WILHELM MILHELMSON,

vs.

THE "THIELBEK," et al.

This cause was heard upon the exceptions to the answer of the Port of Portland filed in this cause and was argued by Mr. William C. Bristol, of proctors for libellant, by Mr. C. E. S. Wood and Mr. Erskine Wood, of proctors for the claimant of the "Thielbek," and by Mr. Wirt Minor, of proctors for the respondent, the Port of Portland, on consideration whereof it is ordered and adjudged that said exceptions be and the same are hereby sustained.

And afterwards, to wit, on the 16th day of November, 1914, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

OPINION ON MERITS.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN,

Libelant,

vs.

THE "THIELBEK," and PORT OF PORTLAND,
Respondents,

No. 6116.

"THIELBEK," and KNOHR & BURCHARD,

Libelants,

vs.

PORT OF PORTLAND and "THODE FAGE-
LUND,"

Respondents.

No. 6129.

E. de NEMOUR-DUPONT POWDER CO.,

Libelant,

vs.

"THIELBEK" and PORT OF PORTLAND,

Respondents.

No. 6130.

W. R. GRACE & COMPANY,

Libelant.

vs.

"THIELBEK" and PORT OF PORTLAND.

W. C. Bristol, Portland, Oregon, for Wilhelmsen
and "Thode Fagelund."

Wirt Minor, Portland, Oregon, for Port of Portland.
Erskine Wood, Portland, Oregon, for Knohr & Bur-
chard and "Thielbek."

Zera Snow and McCormick Snow, Portland, Oregon,
for Cargo.

R. S. BEAN, District Judge.

About half past three o'clock on the morning of August 24, 1913, a collision occurred in the harbor of Astoria between the German bark "Thielbek," in tow of the tug Ocklahama, belonging to the Port of Portland, and the Norwegian steamer "Thode Fagelund," in charge of one of the pilots of the Port. The night was dark but clear. Both vessels were greatly damaged and the owners of the Fagelund's cargo suffered loss on account of the collision. The owners of the "Fagelund" libeled the "Thielbek" *in rem* and the Port of Portland *in personam*. The owner of the "Thielbek" libeled the "Fagelund" *in rem* and the Port of Portland *in personam*, and the owners of the cargo libeled the "Thielbek" *in rem* and the Port of Portland *in personam*. These actions were, by stipulation of parties, consolidated for trial and heard on the pleadings and proof.

The "Thode Fagelund" is a steel steamship 350 feet long, 50 feet beam and 4355 gross tonnage. At the time of the collision she was proceeding to sea drawing twenty-five or twenty-six feet of water, with a cargo of lumber, piling and other merchan-

dise, in charge of Pilot Nolan, an employe of the Port of Portland, who controlled her navigation. She had come down the river the evening before and anchored in the harbor on the same side of the fairway and about a thousand or fifteen hundred feet above the government dredge "Chinook," which was riding at anchor opposite the upper end of the O. R. & N. Dock, and on the opposite side of the channel, leaving a clear passage-way of eight or nine hundred feet between the stern of the dredge when athwart the stream and the dock.

The evidence of those on board the "Fagelund" is that about 3:20 in the morning she weighed anchor and started down the harbor against a flood tide and under a slow bell and a starboard helm. At that time the stern of the "Chinook" was swinging with the tide to the north side of the channel, and it was necessary for the "Fagelund" to bear to her port in order to get around the dredge and into mid-channel; that she thus proceeded for five minutes, when her helm was steadied and an order given for half-speed ahead, and the ship headed to a point on the Astoria side a short distance below the Callendar Dock, and to clear the stern of the dredge about one hundred feet. She continued on this course and speed until about a ship's length above the dredge when the lights of the Ocklahama and her tow were observed over the dredge, about one-half or three-quarters of a point off the "Fagelund's" starboard bow, coming up the river on the Astoria side, showing both red and green lights. The

vessels were then about fourteen or fifteen hundred feet apart. The pilot of the "Fagelund" promptly blew two blasts of his whistle and put his helm hard-astarboard (where it remained until the collision), but receiving no answer, stopped his engines and a few seconds later, estimated to be ten or twelve, repeated the signals which were promptly answered by the "Ocklahama," but as the "Ocklahama" did not appear to change her course, the "Fagelund," within five or six seconds after the exchange of signals, ordered her engines full speed astern, causing her bow to swing to starboard, blew four blasts of her whistle and, after the engines had been backing for about a minute and a half, dropped her port anchor, and almost immediately she was struck on the port bow a few feet from the stem by the bow of the "Thielbek," which plowed into her some distance almost on a line fore and aft.

The "Thielbek" is a sailing vessel 300 feet long, 45 feet beam, and was drawing thirteen feet six. About three o'clock on the morning of the accident the tug "Ocklahama," with the "Thielbek" lashed to her starboard side, left the anchorage ground in the lower harbor and started up the river. The evidence of those on board the "Thielbek" and the "Ocklahama" is that their course was along the south side of the harbor, 150 or 200 feet from the docks and six or eight hundred feet south of the stern of the Chinook; that when about 150 feet off and a short distance below the Callendar Dock the green light and range lights of the "Fagelund" came

into view over the dredge "Chinook" about two points off the port bow and about twelve or fifteen hundred feet distant; that the "Ocklahama" was immediately slowed down to half-speed; that within the time it would take to count ten the two blasts of the "Fagelund's" whistle were heard but were not answered because the signals were unusual, indicating a starboard-to-starboard passage, and it was thought wise to wait for her to come out from behind the dredge in order to more accurately ascertain her position and intention; that at the time the first signals were given the "Ocklahama" with her tow was swinging slightly to port; that as soon as the "Fagelund" came out from behind the dredge two whistles were given by her and promptly answered by the "Ocklahama"; that the helm of the "Ocklahama" was immediately put to starboard and she began to swing to port; that at the time the "Fagelund" was sighted she showed her green light and her range lights were open; that the range lights began to close up, whereupon the engines of the "Ocklahama" were stopped and put full speed astern under a port helm in order to give the "Fagelund" time to make the passage before the "Ocklahama" would come up to the "Chinook"; that just shortly before the collision the red light of the "Fagelund" appeared and her anchor was heard going down; that the engines of the "Ocklahama" were backing full speed astern at the time, but it was impossible to avoid a collision.

Under these circumstances the "Fagelund" was,

in my judgment, alone at fault. She was navigating in a narrow channel and, according to the testimony on her behalf, both side lights of the opposing vessel were in view. She therefore should have signaled for a port passage (Pilot Rules 4 and 10) unless the special circumstances rendered a departure from the rules necessary (Pilot Rule 11). It may be and probably is true that her close proximity to the "Chinook" when the "Ocklahama" was sighted, the necessity of her going to port to clear the dredge and the difficulty of thereafter swinging to starboard against the tide justified a departure from the rules, but the signals given were unusual and clearly excused the pilot of the "Ocklahama" from answering them until the "Fagelund" came out from behind the dredge, and did not justify her in failing to attempt to execute the maneuver agreed on. It was negligence on her part to stop and back after the passing signals (*The Nutmeg State*, 62 Fed. 847; *The St. Johns*, 34 Fed. 763), and especially without giving the blasts of her whistle indicating that she was so doing as required by the Pilot Rules.

It is manifest from the testimony and substantially admitted by Nolan that at the time of the exchange of the signals there was room to pass safely in accordance therewith if he had kept on his course and the "Ocklahama" had obeyed the signals. It is claimed, however, that the "Ocklahama" did not change her course after the signals had been exchanged. Conceding that it was her duty to do so in order to assist the "Fagelund" in

executing the passage requested, the testimony of all the witnesses aboard the "Ocklahama," as well as the physical facts, shows that she did swing to port. At the time the signals were given and exchanged, the "Ocklahama" and her tow were passing up the south side of the channel, 150 or 200 feet from the docks and the point of collision is estimated by the witnesses to have been from fifty to one hundred and fifty feet off the dredge "Chinook," and from seven to eight hundred feet from the O. R. & N. Dock. If the "Ocklahama" had continued on the course she was pursuing at the time the signals were exchanged, she would have passed at least three or four hundred feet south of the place of collision, and it is therefore evident she must have changed her course to port to that extent in going a distance of a thousand or twelve hundred feet.

Many other faults are alleged against the "Ocklahama," such as that she did not maintain an efficient lookout; that she did not give one blast of her whistle when she first sighted the "Fagelund"; that she failed to answer the "Fagelund's" first signal; that her pilot was incompetent and inexperienced; that she had a red light on her own port side and that of her tow; that she was navigating at an unusual rate of speed and on a varying helm, and the like, but these are either not sustained by the testimony or did not contribute to the collision. The evidence shows that her pilot was experienced and competent; that she was excused from answering

the first signal; that she observed the "Fagelund" as soon as she could be seen on account of the "Chinook"; that she was navigated at an ordinary and reasonable speed; that her failure to give one blast of the whistle when she first sighted the "Fagelund" was not negligence; that the red lights on the "Ocklahama" and "Thielbek," if there were more than one, did not in any way confuse or mislead the "Fagelund." The collision was due entirely to the fact that the "Fagelund," after asking for and receiving permission to cross the bow of the "Ocklahama," failed to execute such movement but on the contrary reversed her engines, and swung to her own starboard directly across the course she had assigned to the "Ocklahama" a few seconds before. Her fault was sufficient to account for the accident, and she is not permitted to escape liability by raising a doubt regarding the movements of the "Ocklahama." In order to hold the latter liable, in whole or in part, her negligence must be clearly shown. Any doubt arising from her movements or the contribution of her faults, if any, to the collision should be resolved in her favor. (The Victory and The Plymothian, 168 U. S. 410; The North Point, 205 Fed. 958.) There is no doubt in my mind that if the "Fagelund" had continued on the course she had indicated she desired and intended to take, the collision would have been avoided. She was struck on her port bow almost headon, showing that if she had gone but a short distance to port as she signaled she intended to do, the "Ocklahama" and

her tow would have passed in safety. Nor do I think the acts of the pilot of the "Fagelund" in these respects can be considered mere errors of judgment which any prudent and skillful navigator might have made under the same circumstances. The condition was one of his own seeking. He had asked for and been granted the right to a starboard passage. He did not execute the maneuver. If he had kept on the course he himself had asked for, and not changed his mind and reversed within five or six seconds after the exchange of signals he would have had five or six hundred feet of clear water to go through. He deliberately selected his course, and it was his duty to follow it and the opposing vessel had a right to rely upon his doing so. He not only failed to execute the maneuver but reversed and backed, making the carrying out of the passage he had asked for impossible. He did not even warn the "Ocklahama" that he was backing as required by the pilot rules. Having thus committed a positive breach of statutory duty, it is incumbent upon the "Fagelund" to show not only that her fault did not contribute to the disaster, but that it could not have done so. (Yang Tsye In. Assn. vs. Furness, Withy Co., 215 Fed. 863; The Beaver, 197 Fed. 866.) She cannot excuse herself by throwing doubt upon the movements of the opposing vessel.

Nolan was an employe of the Port of Portland, and it is liable for a maritime injury due to his negligence. (U. S. vs. Port of Portland, 147 Fed.

865; Port of Portland vs. U. S., 176 Fed. 866.) It is claimed, however, that the liability of the Port as far at least as parties with whom it contracts for pilotage or towage service is concerned, is limited to \$10,000 by the statute creating it. (Lord's Laws of Oregon, Sec. 6108.) This question was carefully considered on exceptions to the answer in this case, and the court ruled that the extent of the liability of the Port of Portland for negligence of its pilots causing a maritime tort is governed by the general admiralty law and cannot be limited by state statute. ("The Thielbek," 811 Fed. 685.) Although I have re-examined the question in the light of the argument of the Proctor for the Port, I find no reason for changing my views.

Decrees may be prepared in accordance with this opinion, the amount of damages to be hereafter determined by the Court or through a Commissioner, as the parties may elect.

Filed November 16, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 19th day of November, 1914, there was duly filed in said Court, a Motion to Amend Libel, in words and figures as follows, to wit:

MOTION TO AMEND LIBEL.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "THODE FAGELUND,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED
COURT:

Comes now Wilhelm Wilhelmsen, libelant above named, and moves the Court to allow an amendment to the original libel herein by inserting between Article XV and Article XVI of page 14 of said libel an article to be known as Article XVI, reading as follows, to wit:

ARTICLE XVI.

That if the said collision was not brought about, occasioned and incurred in the manner and because of the acts and things done as hereinbefore propounded, the aforesaid collision was occasioned, incurred and brought about through the negligent act of the pilot Nolan, an employe of the Port of Portland, in that after his signals for passing as agreed upon were answered and accepted he did not keep the "Thode Fagelund" upon her course instead of reversing and backing as he did do; and so said collision and all the damage as a result thereof was caused by the Port of Portland.

And that Article XVI as in said original libel on page 14 be changed in its number so that it will become new Article XVII.

This motion is based upon the records and files and evidence in this Court, and upon the general prayer of the original libel filed August 30, 1913, herein.

W. C. BRISTOL,
Proctor for Libelant.

DISTRICT OF OREGON, }
County of } ss.

Due service of the within Motion is hereby accepted in Multnomah County, Oregon, this Nov. 19, 1914., by receiving a copy thereof, duly certified to as such by, attorney for

WIRT MINOR,
Proctor for Port of Portland.

ERSKINE WOOD,
Proctor for "Thielbek."

ZERA SNOW,
For Cargo Owners.

Filed November 19, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 30th day of November, 1914, the same being the 25th judicial day of the Regular November, 1914, Term of said Court. Present: the Honorable Robert S. Bean.

United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER TO AMEND LIBEL.

In the District Court of the United States in and for the District of Oregon.

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel steamship "THODE FAGELUND,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat, "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

This cause coming on further to be heard on the motion of Wilhelm Wilhelmsen for an order allowing the insertion in the original libel as if made and without rewriting the same by inserting in said original libel between Articles XV and XVI of page 14 of said original libel an article to be known as Article XVI, reading as follows, to wit :

ARTICLE XVI.

That if the said collision was not brought about, occasioned and incurred in the manner and because of the acts and things done as hereinbefore propounded, the aforesaid collision was occasioned, incurred and brought about through the negligent

act of the pilot Nolan, an employe of the Port of Portland, in that after his signals for passing as agreed upon were answered and accepted, he did not keep the "Tode Fagelund" upon her course instead of reversing and backing as he did do; and so said collision and all the damage as a result thereof was caused by the Port of Portland.

And that Article XVI as in said original libel on page 14 thereof be changed in its number so that it will become new Article XVII.

Having had consideration of the Court and counsel being heard it is upon consideration,

CONSIDERED, ORDERED, ADJUDGED and DECREED that Wilhelm Wilhelmsen be and he is hereby permitted so to amend his said original libel and said original libel shall be considered upon the record herein as having Article XVI changed and numbered to read Article XVII and new Article XVI therein as follows:

ARTICLE XVI.

That if the said collision was not brought about, occasioned and incurred in the manner and because of the acts and things done as hereinbefore propounded, the aforesaid collision was occasioned, incurred and brought about through the negligent act of the pilot Nolan, an employe of the Port of Portland, in that after his signals for passing as agreed upon were answered and accepted he did not keep the "Thode Fagelund" upon her course instead of reversing and backing as he did do; and so said

collision and all the damage as a result thereof was caused by The Port of Portland.

The proctors for the Port of Portland to present and file by Monday, December 7th, any objections they may see fit to prefer against this order.

R. S. BEAN, Judge.

Filed November 30, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 2d day of December, 1914, there was duly filed in said Court, Objections of Respondent, the Port of Portland, to Proposed Amendments to Libel, in words and figures as follows, to wit:

OBJECTIONS OF PORT OF PORTLAND TO
PROPOSED AMENDMENTS TO LIBEL; MO-
TION TO DISALLOW PROPOSED AMEND-
MENTS; AND MOTION FOR DECREE.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "THODE FAGELUND,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furni-
ture, equipment, tackle and apparel; and THE
PORT OF PORTLAND, owner of the tug boat
"OCKLAHAMA," her engines, boilers, machin-
ery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE THE JUDGES OF THE ABOVE
ENTITLED COURT:

Comes now the Port of Portland, respondent herein, by its proctors, and objects to the proposed amendment of the libel of Wilhelm Wilhelmsen, libellant herein, on the grounds and for the reasons hereinafter specified, to wit:

I.

The proposed amendment is not in substance an amendment at all, but constitutes a new allegation of negligence.

II.

Such new allegation of negligence is not only utterly at variance both with the allegations of the original libel herein and with the evidence and proof presented by said libellant, but also is expressly contradicted by the pleadings, testimony, briefs, and arguments proffered herein by proctor for said libellant.

III.

The established practice in the Courts of Admiralty of the United States forbids the introduction, after decision of a cause upon the original issues, of totally new and contradictory issues such as are raised by the proposed amendment, under whatever form such issues are sought to be introduced.

IV.

The "Thode Fagelund" is liable *in rem*, and her owner is liable *in personam*, for the acts of her pilot, under the pilotage laws of Oregon and the

decisions of the Courts of Admiralty of the United States.

V.

In the libel herein as originally filed the liability of The Port of Portland, if any, is alleged to be due to specific acts of negligence in the navigation of the tug boat "Ocklahama" and to specific acts of negligence of the pilot in charge of the navigation of the said tug boat "Ocklahama"; whereas in the proposed amendment to said libel the liability of the Port of Portland, if any, is alleged to be due to the incompetence of the pilot in charge of the "Thode Fagelund," and therefore the liability of the Port of Portland is by such proposed amendment predicated upon a failure to furnish a competent pilot and upon a failure to pilot the said "Thode Fagelund" safely, and consequently upon a breach of maritime contract and not upon a maritime tort.

Wherefore said respondent the Port of Portland, appearing herein as aforesaid by its proctors, moves your honors and this Court to disallow the proposed amendment to the said libel of Wilhelm Wilhelmsen, and

Further moves that the order allowing said proposed amendment and heretofore in this cause entered be vacated, set aside, and held for naught, inasmuch as said order was made without giving to the Port of Portland any opportunity to be heard thereon, and inasmuch as the said order does not conform to the opinion of this Court heretofore ren-

dered herein or to the law properly applicable to this cause, and

Further moves that the said libel of Wilhelm Wilhelmsen be dismissed, and

Finally moves your honors and this Court to enter conformably to the opinion of this Court heretofore rendered herein a decree, substantially in the form attached hereto, dismissing the said libel herein and awarding to the said respondent the Port of Portland its costs and disbursements herein.

TEAL, MINOR & WINFREE,
ROGERS MACVEAGH,

Proctors for Respondent The Port of Portland.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

FINAL DECREE.

WILHELM WILHELMSSEN, owner of the steam-
ship "THODE FAGELUND,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

This cause having been heretofore regularly consolidated and submitted upon the pleadings and the evidence adduced by the several parties thereto

and received upon the issues therein; oral argument having been made and written briefs submitted to this Court by the respective proctors for the several parties; a bond to release the steamship "Thode Fagelund" having been duly filed and accepted, in and by which bond Wilhelm Wilhelmsen, through W. C. Bristol, his proctor by cable authority, Wilhelm Wilhelmsen, owner, by M. B. Hansen, master, and American Surety Company of New York agreed to abide by and to perform the decree of this Court, or in case of appeal; the opinion of this Court, holding the said "Thode Fagelund" to be alone at fault for the collision which is the subject-matter of the controversy between the said parties, having heretofore been rendered and filed; and the Court being fully advised in the premises, it is hereby

CONSIDERED, ORDERED, ADJUDGED and DECREED that the libel of libelant Wilhelm Wilhelmsen against the German bark "Thielbek" and the Port of Portland, respondents, be and the same is hereby dismissed, the costs and disbursements incurred by the said respondents to be paid by the said libelant; and it is hereby further

CONSIDERED, ORDERED, ADJUDGED and DECREED that this decree be entered as a decree of this Court and as of date this . . day of November, 1914.

.....,
District Judge.

Service of the within objections and motions and a receipt of a copy is hereby admitted this 2d day of December, 1914.

W. C. BRISTOL,

Of Proctors for Libelant.

Filed December 2, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 14th day of December, 1914, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

OPINION.

In the District Court of the United States for the District of Oregon.

"THE THIELBEK,"

Libelant,

vs.

"THE THODE FAGELUND,"

Respondent.

Portland, Oregon, Monday, December 14, 1914.

R. S. BEAN, D. J. (oral):

The so-called Thielbek cases all arose out of a collision in the harbor at Astoria between the "Thielbek," which was in tow of the "Ocklahama," belonging to the Port of Portland, and the "Fagelund," which was in charge of a pilot, an employe of the Port and subject to his orders. The owners of the "Fagelund" filed a libel against the "Thielbek" and the Port of Portland charging in substance that the collision was due to fault in the navigation of these two vessels and particularly to the navigation of the "Ocklahama." The owners of the cargo on the "Fagelund" filed similar libels

against the "Thielbek" and the Port of Portland, and the owners of the "Thielbek" filed a libel against the "Fagelund" *in rem* and the Port of Portland *in personam*, alleging that the collision occurred either through negligence in the operation of the "Fagelund" or through the negligence of the operators of the "Ocklahama." Answers were filed and issues joined and the four cases were consolidated for trial and after a somewhat protracted trial lasting a week or ten days, the Court concluded that this collision was due solely to the fault of the pilot in charge of the navigation of the "Fagelund" and directed that decrees might be prepared accordingly. Thereupon the owners of the "Fagelund" and her cargo owners filed in this court amendments to their libel, in which they allege in substance that if the libel did not occur through the fault, as alleged in the original libels, that it did occur through the negligence and carelessness of the pilot of the "Fagelund." The Port of Portland has appeared and moved to dismiss these amendments on the ground principally that the facts therein stated were known to the owners of the "Fagelund" and the cargo owners at the time they filed their original libels, and therefore the Court ought not to permit amendments to be made at this time. Now, admiralty rule 24 provides that in all informations and libels in causes of admiralty amendments in matters of form may be made at any time on motion to the Court as of course and new counts made and filed and amendments in matter of substance may

be made upon motion at any time before the final decree, upon such terms as the Court may require, and in the Syracuse the Supreme Court of the United States said that in admiralty an omission to state some fact which proved to be material but which could not have caused any surprise to the opposite party will not be allowed to work an injury to the libellant if the Court can see that there was no design on its part in omitting to state such facts, and that the doctrine of technical variance is unknown in admiralty. It is the duty of the Court to extract the real cause from the record and decide accordingly. And it has therefore been held, as I understand the law, that where it appears that a proposed amendment would work no injury to the defendant, the Court should permit it to be made.

Now, in this case, as I said a moment ago, it has been tried upon all the facts and upon issues joined which presented those facts for the consideration of the Court, and from that the Court has reached a certain conclusion and now it seems to it that within rule 24 and the interpretation of it by the Supreme Court in the Syracuse case, it is not only within the discretion of the Court to permit this amendment, but that it ought to do so in order that the case may be tried and determined as speedily as possible. To deny the amendment at this time would simply put the burden on the cargo owners and the owners of the "Fagelund" to bring other libel suits based upon the same facts, and the Court would be required and compelled to go

through another long and protracted trial and at the end of it arrive at the same conclusion it has now. So I take it the motion to strike these amendments from the files should be overruled.

But neither the "Fagelund" nor the cargo owners as against the Port of Portland are entitled to any costs incurred up to this time and decree should so provide.

I conclude, therefore, the amendments should be allowed and decree should be entered here, (1) dismissing the libels of the "Fagelund" and cargo owners as against the "Thielbek"; (2) decree in favor of the "Thielbek" against the "Fagelund" *in rem* and the Port of Portland *in personam*, there to be, however, but one satisfaction; (3) a decree in favor of the "Fagelund" and against the Port of Portland for its damages, and costs hereafter to be incurred, and a similar decree in favor of the cargo owners. And decrees may be prepared accordingly.

Filed December 14, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 15th day of December, 1914, there was duly filed in said Court a Motion of the Respondent, the Port of Portland, for leave to amend its Answer, in words and figures as follows, to wit:

MOTION OF THE PORT OF PORTLAND TO
AMEND ANSWER.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat, "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED
COURT:

Comes now The Port of Portland, respondent above named, and moves the Court to allow this respondent to amend its answer to the original libel herein and to the amendment of said libel heretofore allowed by your honors, by inserting at page 11 in its said answer the following, to be known and designated as Article XVII, reading as follows:

ARTICLE XVII.

This respondent further shows to your honors that the collision between the steamship "Thode Fagelund" and the bark "Thielbek," in tow of this respondent's steam tug boat "Ocklahama," was not caused by or due to any act or omission on the part of this respondent or of its employes, the master, pilot, officers or crew of said steam tug boat, nor to any act or omission on the part of the master, officers or crew of the bark "Thielbek," but was caused by and entirely due to the acts and omissions of the master, officers and crew of the steamer

"Thode Fagelund" in this, that after the steam tug boat "Ocklahama" and the said bark "Thielbek" had been sighted by the master, officers and crew of the said steamship, and after the said steamship had given to the said steam tugboat and said bark a passing signal by two blasts of the steam whistle of said steamship, and after the said steam tugboat, having said bark in tow, had answered said passing signal by two blasts of the steam whistle of said steam tugboat, the said steamship did not continue on its course or divert its course to port as intended and as indicated by said passing signal which it had given, but on the contrary, and as soon as the master, officers and crew of said steamship heard the two blasts of the steam whistle of the steam tugboat "Ocklahama" given in answer to the passing signal of said steamship, the said steamship, acting under the orders of its master, stopped its engines, and within a few seconds thereafter its master and pilot and officers reversed its engines, backed its engines full speed astern, and continued to run its engines full speed astern until said steamship collided with the bark "Thielbek" in tow of the steam tugboat "Ocklahama," and thereby the course of the "Thode Fagelund" was directed to its starboard and across the bow of the bark "Thielbek" and of the steam tugboat "Ocklahama," and in this, that the master, pilot, officers and crew of the steamship "Thode Fagelund" did not signal or advise the said bark and steam tugboat that the

said steamship was backing or that its course was changed to starboard, and this respondent alleges that the collision was caused by the stopping of the engines of the said steamship and the reversing of the engines of the said steamship as above set forth, and was due to these causes only, and either to the negligence of the master of the said steamship in stopping and reversing as aforesaid or to the error in judgment of the master of the said steamship and of the pilot of said steamship, or to both of said causes.

This motion is based upon the records, files and evidence in this cause and is made in order that the answer of this respondent to the original libel filed by the libelant and to the amendment thereof heretofore allowed by this court may be responsive to said libel when so amended.

TEAL, MINOR & WINFREE,
ROGERS MACVEAGH,

Proctors for Respondent, The Port of Portland.
Filed December 15, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on Tuesday, the 15th day of December, 1914, the same being the 38th judicial day of the Regular November, 1914, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER ALLOWING PORT OF PORTLAND TO
AMEND ANSWER.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "THODE FAGELUND,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tugboat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

This cause coming on further to be heard on the motion of respondent The Port of Portland for an order allowing the insertion in the answer of this respondent to the libel of an amendment, so that the answer of this respondent may be responsive to the libel as amended, and that such amendment may be made without re-writing said answer, by inserting in said answer on page 11 thereof an additional

Article numbered XVII, said Article XVII so inserted to read as follows:

ARTICLE XVII.

This respondent further shows to your Honors that the collision between the steamship "Thode Fagelund" and the bark "Thielbek" in tow of this respondent's steam tugboat "Ocklahama" was not caused by or due to any act or omission on the part of this respondent or of its employes, the master, pilot, officers or crew of said steam tugboat, nor to any act or omission on the part of the master, officers or crew of the bark "Thielbek," but was caused by and entirely due to the acts and omissions of the master, officers and crew of the steamer "Thode Fagelund" in this, that after the steam tugboat "Ocklahama" and the said bark "Thielbek" had been sighted by the master, officers and crew of the said steamship, and after the said steamship had given to the said steam tugboat and said bark a passing signal by two blasts of the steam whistle of said steamship, and after the said steam tugboat, having said bark in tow, had answered said passing signal by two blasts of the steam whistle of said steam tugboat, the said steamship did not continue on its course or divert its course to port as intended and as indicated by said passing signal, which it had given, but on the contrary, and as soon as the master, officers and crew of said steamship heard the two blasts of the steam whistle of the steam tugboat "Ocklahama" given in answer to the passing signal of said steamship, the said steamship,

acting under the orders of its master, stopped its engines, and within a few seconds thereafter its master and pilot and officers reversed its engines, backed its engines full speed astern, and continued to run its engines full speed astern until said steamship collided with the bark "Thielbek" in tow of the steam tugboat "Ocklahama," and thereby the course of the "Thode Fagelund" was directed to its starboard and across the bow of the bark "Thielbek" and of the steam tugboat "Ocklahama," and in this, that the master, pilot, officers and crew of the steamship "Thode Fagelund" did not signal or advise the said bark and steam tugboat that the said steamship was backing or that its course was changed to starboard, and this respondent alleges that the collision was caused by the stopping of the engines of the said steamship and the reversing of the engines of the said steamship as above set forth, and was due to these causes only and either to the negligence of the master of the said steamship in stopping and reversing as aforesaid or to the error in judgment of the master of the said steamship and of the pilot of said steamship, or to both of said causes.

And the court having considered the matter, it is
CONSIDERED, ORDERED, ADJUDGED and
DECREED that respondent The Port of Portland
be and it is hereby permitted so to amend its answer
to the original libel and to the libel as amended.

Done and dated this 15th day of December, 1914.

R. S. BEAN, District Judge.

Filed December 15, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 16th day of December, 1914, there was duly filed in said Court, Objections of Libelant to proposed amendments to the Answer of The Port of Portland, and to the order allowing amendments, in words and figures as follows, to wit:

OBJECTIONS OF LIBELANT TO PROPOSED
AMENDMENTS TO ANSWER OF PORT OF
PORTLAND AND TO ORDER ALLOWING
AMENDMENTS.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tugboat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

Comes now Wilhelm Wilhelmsen, above named libelant, and objects and excepts to the allowance of the motion filed on the 15th day of December, 1914, herein for the reason that the same was not served upon counsel or proctor for libelant until after the same was submitted to and acted upon by the Court;

And for the further reason that the said motion contains matter in amendment not germane to the case tried upon the record, but introduces a new and different matter contrary to the theory upon which the cause was tried and not in consonance with the Court's opinion, viz., that the master of the "Thode Fagelund" was engaged in and responsible for the navigation of said vessel;

And for the further reason that the matter contained in said motion and in said order thereon, in so far as they purport to connect the master of the "Thode Fagelund" with the occasion and accomplishment of said collision, submits things not before the Court at the time of the trial and not competent to be allowed as an amendment;

That said order is erroneous in that it was improvidently granted no doubt upon the supposition that the amendment sought was germane to the record, whereas in truth and in fact it contains said new matter.

Wherefore, this libellant prays consideration of these his exceptions and objections and asks the Court to vacate said order and decree of amendment in so far as it contains said new matter and to disallow said motion.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within Objections is hereby accepted in Multnomah County, Oregon, this 16th day of December, 1914, by receiving a copy thereof, duly certified to as such by W. C. Bristol, Proctor for Libellant.

WIRT MINOR,

Proctor for Port of Portland.

Filed December 16, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 4th day of January, 1915, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

OPINION.

*In the District Court of the United States for the
District of Oregon.*

WILHELM WILHELMSSEN,

Libellant,

vs.

"THE THIELBEK,"

Respondent.

Portland, Oregon, Monday, January 4, 1915.

R. S. BEAN (oral):

In the Wilhelmsen case a motion has been made to strike out the amended answer of the Port of Portland. These four cases were consolidated for trial and as a result the Court found that the collision was due solely to the negligence of the pilot of the "Fagelund," who was an employe of the Port of Portland, and that the Port of Portland

was responsible for the damages. Thereupon the owners of the "Fagelund" and the owners of the cargo aboard the "Fagelund" applied to the Court for permission to amend their libel by alleging in substance that if the collision did not occur in the manner stated in the libel, that it did occur through the negligence of the Port of Portland's agent and that they were therefore entitled to judgment against the Port for the amount of their damages. This application to amend was contested but allowed. Thereupon the Port filed an amended answer in which it sets up that the collision occurred through the negligence of the Captain of the "Fagelund" and not the pilot, and therefore the Port is not liable. Now, this is simply intended to make the record conform to what counsel for the Port of Portland conceives the evidence to show and it seems to me it is an answer that is proper and ought to be allowed, and certainly in view of the fact that the Court exercised its discretion and allowed the "Fagelund" and the cargo owners to amend their libels by setting up a different liability from that originally set up, there can be no objection to the Port of Portland meeting that by answer, and making it conform to what it conceives to have been the testimony. Indeed, I have no doubt if, upon further consideration of this case, it should be concluded that the negligence of the captain was the cause of this damage of collision, that the judgment will be reversed whether these facts are pleaded or not, and the motion therefore will be overruled.

Filed January 4, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 4th day of January, 1915, the same being the 55th judicial day of the regular November, 1914, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER DENYING MOTION TO STRIKE OUT
AMENDED ANSWER OF PORT OF
PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

No. 6111.

WILHELM WILHELMSSEN

vs.

The "THIELBEK."

January 4, 1915.

This cause was heard by the Court upon the motion of the libelant to strike out the amended answer of the respondent Port of Portland, and was argued by Mr. William C. Bristol, of proctors for libelant, and by Mr. Wirt Minor, of proctors for the said respondent; upon consideration whereof it is ordered and adjudged that said motion be and the same is hereby denied.

And afterwards, to wit, on the 25th day of October, 1915, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

OPINION ON QUESTION OF DAMAGES.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel steamship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK," etc., and THE PORT OF PORTLAND, owner of the tugboat "Ocklahama," etc.,

Respondents.

MEMORANDUM BY BEAN, District Judge:

The "Thode Fagelund," a Norwegian vessel with a cargo of lumber and piling belonging to Grace & Company, and powder and dynamite owned by the Dupont Powder Company, was injured in a collision with the German bark "Thielbek" while proceeding down the Columbia River on a voyage to sea. The "Thielbek" was in charge of a tug belonging to the Port of Portland at the time of the collision and the pilot of the "Fagelund" was an employe of the Port. It was necessary, in order to recondition the "Fagelund," to unload her cargo although it was in no way damaged by the collision. The "Fagelund" libeled the "Thielbek" and the Port of Portland. The Powder Company and Grace & Co. also libeled the "Thielbek" and the Port of Portland to recover

damages alleged to have been suffered by them on account of the collision, and the "Thielbek" libeled the "Fagelund" and the Port of Portland. The several cases were consolidated for trial, and the Court, after hearing the testimony, held that the pilot of the "Fagelund" was in fault and therefore the Port of Portland is liable for the damages sustained by each of the parties. The damages to the "Thielbek" have been ascertained and determined and a decree entered accordingly.

The matter is now submitted on the question of damages, if any, which the "Fagelund" and her cargo owners are entitled to recover on account of the collision. The "Fagelund" discharged part of her cargo at Astoria and came up to Portland to discharge the balance. About the time or after the cargo had been discharged, Grace & Company the charterers of the vessel, the owners of the cargo and the agents and representatives of the several insurance companies, by mutual agreement, broke up the voyage and reshipped the cargo by other vessels belonging to or under charter to Grace & Company. In doing so they caused to be incurred considerable outlay for towage, barge rent, salaries, forwarding charges, expenses of agents and representatives, and other matters over and above what would have been necessary if the cargo had been reloaded on the "Fagelund" after she was repaired, as could have been done with but little delay in excess of that actually incurred. In addition, so-called general average proceedings were had to which neither the

"Thielbek" nor the Port of Portland were parties, and a large amount of expenses incurred, which are sought to be included in the collision damages and charged up against the Port.

Grace & Company and the Powder Company, in my judgment, are not entitled to recover anything in this proceeding against the "Thielbek" or the Port of Portland. The cargo was not damaged in any way by the collision, nor have either of these parties incurred any expense or liability on account of the collision properly chargeable against the negligent party.

Since the matter was submitted to the Court, the cargo owners and the Port of Portland have stipulated in writing that the damages to the cargo owners, including storage, unloading and reloading, towage, general average expense, etc., amount to ten thousand dollars, but all the items included therein, except perhaps the general average expense, were assumed and have been paid by the ship and as far as they are due to the collision are hereafter allowed to the ship as a part of her collision damages and should not also be recovered by the cargo owners. The case was not, as I understand the law, one for general average. Neither the ship nor the cargo was in imminent peril on account of the collision; there was no sacrifice of property or extraordinary expense incurred to avoid the peril. (*Star of Hope*, 76 U. S. 203.) And if general average expense can be recovered from the negligent third party, this is not a case for the application of the doctrine. It is

true there is evidence that the cargo was damaged to some extent in unloading and reloading but there is nothing in the testimony I can find from which I can form an intelligent conclusion as to the extent or the amount thereof. In the report of the General Average adjusters the amount is stated at \$2030.90, but this is not evidence against the "Thielbek" nor the Port of Portland, nor is there anything showing the theory upon which the adjusters ascertained such amount.

The libels of Grace & Company and the Powder Company are therefore dismissed.

The remaining question is the amount the "Fagelund" is entitled to recover against the Port as damages incurred on account of the collision. I have had considerable difficulty in arriving at a conclusion satisfactory to myself due to the fact that all the costs and expenses incurred by the several parties, much of which were not collision damages, have been paid by the ship and are included in her claim against the Port.

From a careful examination of the testimony, my conclusions are that the "Fagelund" is entitled to recover against The Port of Portland as damages the following amounts:

| | |
|---|-------------|
| Voucher 1, Callendar Navigation Company | |
| (less items of Sept. 15, 16 | |
| and 17), towing..... | \$ 1,520.00 |
| 3, Oregon Tug Co., carrying powder from Martin Landing to | |
| Portland | 132.50 |

The "Thielbek" and the "Thode Fagelund" 123

| | |
|---|----------|
| 5, H. Kmorven, watchman..... | 99.00 |
| 7, Pacific Iron Works, pile grabs. | 13.00 |
| 11, Portland Lumber Co., towing boomsticks and piling..... | 15.00 |
| 12, W. R. Grace & Co., unloading and reloading 3,520,617 feet lumber at \$2.35 per M..... | 8,273.45 |
| 12a, Discharging and reloading dy- namite and storage powder.. | 166.30 |
| Overtime discharging Fage- lund | 577.56 |
| 15, C. Wass, watchman | 24.00 |
| 16, C. M. Pettibone | 60.00 |
| 17, C. M. Pettibone | 54.00 |
| 18, George Eggers | 92.75 |
| 19, P. C. Hagemann, rafting logs. | 12.00 |
| 23, Pacific Lumber Inspection Bu- reau, tally books | 5.80 |
| 24, E. M. Cherry, Llyod's agent... | 22.20 |
| 29, E. M. Cherry, receiving and calling survey vessel | 20.50 |
| 30, V. Boeling, protest | 5.00 |
| 31, P. Roblin, watchman | 35.00 |
| 32, M. Moran, pilotage | 51.25 |
| 33, Port of Portland, towage..... | 25.00 |
| 34, Port of Portland, tug as convoy | 100.00 |
| 35, L. Veysey, survey of damage.. | 70.00 |
| 36, L. Veysey, reports, specifica- tions, etc. | 110.00 |
| 37, W. C. McNaught, reports and specifications | 97.50 |

| | |
|--|-------------|
| 39, Endre M. Cedarbergn, appoint- ing surveyors, etc. | 9.85 |
| 40, Columbia Contract Co., rent barges, etc. | 1,615.00 |
| 41, Henry Hewitt & Co., insurance | 18.00 |
| 43, Crown Columbia Paper Co., wharfage | 536.56 |
| 46, James Towler, survey, etc. ... | 112.00 |
| 52, Max Kuner, adjusting compass | 33.00 |
| 56, Seattle Construction Co., re- pairs | 232.60 |
| 57, Seattle Construction Co., re- pairs | 240.00 |
| 58, Seattle Construction Co., re- pairs | 14,200.00 |
| 63, W. R. Grace & Co., for coal... | 657.12 |
| 64, Lewis, Anderson, Foard & Co., stores lost | 2,366.47 |
| 65, Chief Engineer, overtime | 40.10 |
| Loss of charter hire from Au- gust 24, 1913, until charter resumed, 42 days later, at \$8,687.24 per month, time- charter rate in force at date of collision and computed for 1 2/5 months | 12,162.15 |
| | <hr/> |
| | \$43,804.65 |

I have disallowed the item of victuals and wages of master, officers and crew during the time the ship was undergoing repairs because it was covered, as I understand, by the charter hire.

It was suggested at the argument that the "Fagelund" should recover in this proceeding from Grace & Company the amounts advanced and paid by the ship, and not repaid to her, in excess of that properly chargeable as collision damages, which, according to my conclusion, amounts to \$7098.80. No such issue is made by the pleadings, and moreover such payments were voluntarily made by the master of the vessel pursuant to some arrangement or agreement with the cargo owners or insurance companies, and in my opinion cannot be recovered in this proceeding if at all.

Filed October 25, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 25th day of October, 1915, the same being the 97th judicial day of the regular July, 1915, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

DECREE FOR LIBELANT.

In the District Court of the United States in and for the District of Oregon.

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steel steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tug boat

"Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

This cause having been further heard on the evidence and argued and the opinion of the Court rendered the 25th day of October, 1915, supplemental to the opinions and decisions heretofore given in said cause, it is now

CONSIDERED, ORDERED, ADJUDGED AND DECREED, that Wilhelm Wilhelmsen, owner of the steel steamship "Thode Fagelund," libelant herein, have and recover of and from The Port of Portland, respondent herein, the sum of forty-three thousand eight hundred four and 66/100 dollars (\$43,804.66) with interest thereon at the legal rate from the 24th day of August, 1913, until paid; and further

CONSIDERED, ORDERED, ADJUDGED AND DECREED that in the event the libelant, Wilhelm Welhelmsen, pays or is required or compelled to pay the amount of the damages decreed by this Court in favor of Knohr & Burchard, libelants, owners of the German ship "Thielbek," in cause No. 6116, amounting to the sum of twelve thousand and eight hundred five and 26/100 dollars (\$12,805.26) with interest thereon and costs as therein decreed, then and in that event the said Wilhelm Wilhelmsen shall have and recover of and from The Port of Portland all of said sums, together with interest thereon at the legal rate until paid; and further

CONSIDERED, ORDERED, ADJUDGED AND DECREED that the said Wilhelm Wilhelmsen shall also have and recover his costs herein taxed to the amount of \$177.69 as the same may hereafter be settled on application to the Court.

Given and done this 25th day of October, 1915.

R. S. BEAN,
District Judge.

STATE OF OREGON, }
County of Multnomah. } ss.

I, F. E. Grigsby, do hereby certify that the within decree was served upon Teal, Minor & Winfree, proctors for the Port of Portland; Wood, Montague & Hunt, proctors for the "Thielbek," and Snow & McCamant, proctors for W. R. Grace & Company and Dupont Powder Company, by delivering copies of said decree to their respective offices between the hours of 9 a. m. and 5 p. m. on the 30th day of October, 1915.

F. E. GRIGSBY.

Filed October 25, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 25th day of October, 1915, the same being the 97th judicial day of the regular July, 1915, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceeding were had in said cause, to wit:

ORDER CONSOLIDATING CAUSES FOR
PURPOSES OF APPEAL.

*In the District Court of the United States for the
District of Oregon.*

No. 6111.

October 25, 1915.

WILHELM WILHELMSSEN,

vs.

The "THIELBEK" and THE PORT OF
PORTLAND.

KNOHR-BURCHARD, Nfl., Claimant,

No. 6116.

KNOHR-BURCHARD, Nfl.

vs.

The "THODE FAGELUND" and THE PORT OF
PORTLAND, WILHELM WILHELMSSEN,

Claimant.

No. 6129.

GRACE & COMPANY,

vs.

The "THIELBEK" and THE PORT OF PORT-
LAND, KNOHR-BURCHARD, Nfl.,

Claimant.

No. 6130.

E. I. DUPONT DE NEMOURS POWDER
COMPANY

vs.

The "THIELBEK" and THE PORT OF PORT-
LAND, KNOHR-BURCHARD, Nfl.,
Claimant.

Now, at this day, on motion of Mr. Wirt Minor,
of proctors for the respondent, The Port of Port-
land, it is ordered that the above entitled causes be
consolidated for the purposes of appeal.

And afterwards, to wit, on the 9th day of Novem-
ber, 1915, there was duly filed in said Court a
Notice of The Port of Portland of Appeal, in
words and figures as follows, to wit:

NOTICE OF PORT OF PORTLAND OF APPEAL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steam-
ship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK" and THE PORT
OF PORTLAND,

Respondents.

To William C. Bristol, Esq., proctor for Wilhelm
Welhelmsen, libellant herein, to Messrs. Wood,
Montague & Hunt, proctors for the German bark

"Thielbek," and to G. H. Marsh, Esq., Clerk of
the above entitled Court,

Sirs:

Please take notice that The Port of Portland,
respondent herein, appeals to the United States
Circuit Court of Appeals for the Ninth Circuit from
the decree of the District Court of the United States
for the District of Oregon in the above entitled
cause made and entered on the 25th day of October,
1915, and from each and every part thereof.

Dated at Portland, Oregon, November 9, 1915.

ROGERS MACVEAGH,
TEAL, MINOR & WINFREE,
Proctors for the Respondent,
The Port of Portland.

Service of the within Notice of Appeal and
receipt of a copy is hereby admitted this 9th day of
November, 1915.

W. C. BRISTOL,
Of Proctors for Libelant.
ERSKINE WOOD,
Of Proctors for Respondent "Thielbek."
WALLACE McCAMANT,
Of Proctors for W. R. Grace & Co. and E. I. DuPont
De Nemours Powder Co.
Filed November 9, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 16th day of November, 1915, there was duly filed in said Court, an Assignment of Errors of The Port of Portland, on appeal, in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS OF PORT OF
PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.—No. 6111.

WILHELM WILHELMSSEN, owner of the steam-
ship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK" and THE PORT
OF PORTLAND,

Respondents.

Comes now The Port of Portland, a municipal corporation, respondent and appellant in the above entitled cause, and assigns errors in the decision and decree of the District Court of the United States for the District of Oregon heretofore made and entered in said cause and in the rulings of said District Court as follows:

I.

The court erred in allowing libelant's exceptions to Article II of The Port of Portland's first affirmative answer and defense, wherein it is alleged that the law under which The Port of Portland is organized provides that its liability for an injury to a

vessel, while being towed by one of its tugs or in charge of one of its pilots, due to the fault of the tug or the negligence or incompetence of the pilot, is limited to ten thousand dollars (\$10,000.00), under Lord's Oregon Laws, Sec. 6108.

II.

The court erred in holding that the liability of The Port of Portland for an injury to a vessel while being towed by one of its tugs or in charge of one of its pilots is not limited to ten thousand dollars (\$10,000.00).

III.

The court erred in allowing libelant's exceptions to The Port of Portland's second affirmative defense, wherein it is alleged, among other things, that The Port of Portland is organized as a municipal corporation of Oregon authorized to engage in pilotage and towage on the Columbia and Willamette Rivers, and wherein it is also alleged that the pilots employed by The Port of Portland were duly licensed men and that The Port of Portland exercised due care in the selection and employment of said pilots, and that therefore The Port of Portland is not liable for any acts or injuries arising from the negligence of its said pilots.

IV.

The court erred in finding that the collision between the Norwegian steamer "Thode Fagelund" and the German bark "Thielbek" was caused by or due to or resulted in any way from the negligence

of the pilot M. Nolan on board the said "Thode Fagelund."

V.

The court erred in finding that the said M. Nolan, a pilot in the employ of The Port of Portland and at the time of said collision employed by the master of the said "Thode Fagelund" to pilot the said "Thode Fagelund" from her anchorage in Astoria Harbor to the open sea, was negligent.

VI.

The court erred in holding that The Port of Portland is liable for the alleged negligence of said pilot M. Nolan.

VII.

The court erred in making in this cause a final decree whereby it was adjudged that said Wilhelm Wilhelmsen, owner of the steel steamship "Thode Fagelund," libelant herein, have and recover of and from The Port of Portland, respondent herein, the sum of forty-three thousand eight hundred four and 66-100 dollars (\$43,804.66) with interest thereon at the legal rate from the 24th day of August, 1913, until paid.

VIII.

The court erred in making in this cause a final decree whereby it was adjudged that in the event the libelant, Wilhelm Wilhelmsen, pays or is required or compelled to pay the amount of the damages decreed by this court in favor of Knohr & Burchard, libelants, owners of the German ship

"Thielbek," in cause No. 6116, amounting to the sum of twelve thousand eight hundred five and 26-100 dollars (\$12,805.26) with interest thereon and costs as therein decreed, then and in that event the said Wilhelm Wilhelmsen shall have and recover of and from The Port of Portland all of said sums, together with interest thereon at the legal rate until paid.

IX.

The court erred in making in this cause a final decree whereby it was adjudged that the said Wilhelm Wilhelmsen shall also have and recover his costs herein taxed to the amount of \$....., as the same may hereafter be settled on application to the court.

TEAL, MINOR & WINFREE, and
ROGERS MACVEAGH,

Proctors for Respondent.

Service of the within Assignments of Error and receipt of a copy is hereby admitted this 16th day of November, 1915.

W. C. BRISTOL,
Of Proctors for Libelant.

ERSKINE WOOD,
Of Proctors for Respondent "Thielbek."

SNOW & McCAMANT,
Of Proctors for W. R. Grace & Co., and E. I. du
Pont de Nemours Powder Co.

Filed November 16, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 27th day of November, 1915, there was duly filed in said Court, a Motion of the Claimant of the "Thielbek" for Decree, in words and figures as follows, to wit:
MOTION OF CLAIMANT FOR FINAL DECREE.
*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN,

Libelant,

vs.

THE PORT OF PORTLAND and THE GERMAN
BARK "THIELBEK,"

Respondents.

KNOHR & BURCHARD, Nfl.,

Claimant of "Thielbek."

Comes now the claimant of the bark "Thielbek," Knohr & Burchard, Nfl., by its proctor, Erskine Wood, and moves the court for a final decree herein dismissing the libel herein as to the "Thielbek," with costs to the claimant.

Dated, November 27, 1915.

ERSKINE WOOD,

Proctor for Claimant.

Due service of the within motion by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, November 27, 1915.

W. C. BRISTOL,

Proctor for Libelant.

WIRT MINOR,

Of Proctors for The Port of Portland.

Filed November 27, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 3d day of January, 1916, the same being the 55th judicial day of the Regular November, 1915, Term of said Court; Present, the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

FINAL DECREE FOR CLAIMANT.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," and THE PORT
OF PORTLAND, owner of the tugboat "Ockla-
hama,"

Respondents.

KNOHR & BURCHARD, Nfl.,

Claimant of "Thielbek."

This cause having duly and regularly been heard, the libelant appearing by W. C. Bristol, his proctor, The Port of Portland by Wirt Minor, its proctor, and the claimant by Erskine Wood, its proctor, and the court being of the opinion that the allegations of the libel against the German bark "Thielbek" are not sustained and that the collision alleged in said libel occurred without any fault on the part of the said "Thielbek";

It is now CONSIDERED, ORDERED and DECREED that the libel of Wilhelm Wilhelmsen against the said "Thielbek," etc., be and the same is hereby dismissed and that the claimant Knohr & Burchard, Nfl., recover of and from the libelant Wilhelm Wilhelmsen and his stipulators for costs and value, its costs and disbursements herein taxed at \$2247.93.

R. S. BEAN, Judge.

Filed January 3, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 12th day of January, 1916, there was duly filed in said Court, a Cost Bill of Libelant, in words and figures as follows, to wit:

LIBELANT'S COST BILL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN, owner of the steel
steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK," her boats, furniture, equipment, tackle and apparel; and THE PORT OF PORTLAND, owner of the tugboat "Ocklahama," her engines, boilers, machinery, equipment, furniture, tackle and apparel,

Respondents.

138 *The "Thielbek" and the "Thode Fagelund"*

STATEMENT OF DISBURSEMENTS CLAIMED BY THE
LIBELANT IN THE ABOVE ENTITLED CAUSE, VIZ.:

| | | Allowed by Order of |
|--|----------|------------------------|
| 1913. | | 2/7/16. |
| Aug. 30—Clerk's fees | \$ 20.00 | \$ 33.45 |
| Sept. 1—American Surety Co., Premium on bond | 155.00 | |
| Sept. 30—Marshal's fees | 10.04 | 10.04 |
| Sept. 30—National Surety Co., premium on cost bond | 5.00 | 5.00 |
| Keeper's fees paid by Col. C. E. S. Wood for libelant's account | 102.00 | |
| Oct. 21—A. W. Person, taking testimony of crew | 109.20 | 109.20 |
| Nov. 18—Katherine Beck, taking testimony of "Thielbek" crew | 18.85 | |
| Dec. 2—Photographs of the damage due to the collision.. | 16.35 | |
| Dec. 23—A. C. Bowman, U. S. | | |
| 1914. | | |
| Commissioner at Seattle | 33.30 | |
| Jan. 24—Engravure of maps ... | 13.50 | |
| June 30—A. W. Person, taking testimony | 29.00 | |
| Witness fees and mileage, Mich- ael Nolan | 19.75 | |
| Captain Veysey for testimony .. | 20.00 | |
| Sept. 14 and 24—U. S. Marshal, serving subpoenas | 16.12 | |

| | | |
|-----------------------------------|------------|----------|
| Oct. 10—Mary E. Bell, for the | | |
| entire record in cases | 477.00 | |
| Taking 11 depositions at \$2.50 . | 27.50 | |
| Proctor's fee | 20.00 | \$ 20.00 |
| | <hr/> | <hr/> |
| Total | \$1,092.61 | \$177.69 |

Taxed by order of February 7, 1916. G. H. Marsh,
Clerk.

UNITED STATES OF AMERICA, }
State and District of Oregon. } ss.

I, William C. Bristol, being duly sworn, on my oath say that I am the proctor for libelant in the above entitled cause; that the disbursement set forth herein are true and correct as I verily believe and were necessary and in good faith incurred by the libelant; that I personally disbursed the same; that I make this verification for the libelant because he is a resident of Norway.

WILLIAM C. BRISTOL.

Subscribed and sworn to before me this 12th
day of January, 1916. ROBERT TUCKER,
[Seal] Notary Public for Oregon.

My commission expires September 25, 1919.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within Cost Bill is hereby accepted in Multnomah County, Oregon, this 12th day of January, 1916, by receiving a copy thereof,

duly certified to as such by William C. Bristol, proctor for libelant.

ROGERS MACVEAGH,
TEAL, MINOR & WINFREE,
Proctors for The Port of Portland.
ERSKINE WOOD, by M. C.,
Proctor for Knohr & Burchard, Nfl.

Filed January 12, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 21st day of January, 1916, there was duly filed in said Court, Objections of the Port of Portland to Cost Bill of Libelant, in words and figures as follows, to wit:
OBJECTIONS OF PORT OF PORTLAND TO
COST BILL OF LIBELANT.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN, owner of the steamship "Thode Fagelund,"

Libelant,

vs.

The German bark "THIELBEK" and THE PORT
OF PORTLAND,

Respondents.

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED
COURT:

Comes now The Port of Portland, respondent herein, by its proctors, and objects to the following items of costs claimed by libelant herein on the grounds and for the reasons herein specified:

The Port of Portland objects to each and every one of the following items on the ground that each and every one of them was on its face incurred prior to December 14, 1914, and that under the decision by this Honorable Court in this cause made and entered on December 14, 1914, it was provided that neither the "Thode Fagelund" nor the cargo owners, as against The Port of Portland, were entitled to any costs incurred up to said December 14, 1914, and that the decree should so provide. None of the said items, therefore, can be recoverable as costs by libelant herein.

I.

The Port of Portland objects to the item dated September 1, 1913, American Surety Company, premium on bond, \$155.00, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland, and for the further reason that the same was paid on a bond to release libelant's vessel, the "Thode Fagelund," under a proceeding not brought or initiated by The Port of Portland and is, therefore, as concerns The Port of Portland, a mere voluntary payment and not properly chargeable to The Port of Portland.

II.

The Port of Portland objects to the item dated September 30, 1913, keeper's fees paid by Col. C. E. S. Wood for libelant's account, \$102.00, on the

ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland, and for the further reason that the same was a mere voluntary payment, and not rendered necessary by any action of or proceeding instituted by The Port of Portland, and was incurred solely for libelant's benefit in connection with the release of libelant's vessel, the "Thode Fagelund" under a proceeding not brought or initiated by The Port of Portland and is, therefore, as concerns The Port of Portland, a mere voluntary payment and not properly chargeable to The Port of Portland.

III.

The Port of Portland objects to the item dated October 21, 1913, taking testimony of crew, \$109.20, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

IV.

The Port of Portland objects to the item dated November 18, 1913, Katherine Beck, taking testimony of crew, \$18.85, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

V.

The Port of Portland objects to the item dated December 2, 1913, photographs of the damage due

to the collision, \$16.35, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

VI.

That The Port of Portland objects to the item dated December 23, 1913, A. C. Bowman, U. S. Commissioner at Seattle, \$33.30, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

VII

The Port of Portland objects to the item dated January 24, 1914, engravure of maps, \$13.50, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

VIII.

The Port of Portland objects to the item dated June 30, 1914, A. W. Person, taking testimony, \$29.00, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

IX.

The Port of Portland objects to the item dated June 30, 1914, witness fees and mileage, Michael Nolan, \$19.75, on the ground that the same was

incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

X.

The Port of Portland objects to the item dated June 30, 1914, Captain Veysey, for testimony, \$20.00, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

XI.

The Port of Portland objects to the item dated September 14 and 24, 1914, U. S. Marshal, serving subpoenas, \$16.12, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

XII.

The Port of Portland objects to the item dated October 10, 1914, Mary E. Bell, for the entire record in the cases, \$477.00, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under the decision of this Court, not recoverable by libelant against The Port of Portland.

XIII.

The Port of Portland objects to the item dated October 10, 1914, taking eleven depositions at \$2.50, \$27.50, on the ground that the same was incurred prior to December 14, 1914, and is, therefore, under

the decision of this Court, not recoverable by libelant against The Port of Portland.

TEAL, MINOR & WINFREE,
ROGERS MacVEAGH,

Proctors for Respondent The Port of Portland.
Filed January 21, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 7th day of February, 1916, there was duly filed in said Court, an Opinion of the Court on Objections to Cost Bill, in words and figures as follows, to wit:

OPINION ON OBJECTIONS OF PORT OF PORTLAND TO COST BILL OF LIBELANT.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN,

Libelant,

vs.

THE "THIELBEK,"

Respondents.

The costs claimed by the libelant against The Port of Portland will be disallowed, as the several items thereof were incurred prior to the filing of the amended libel, which was allowed on condition that the libelant should not recover costs previously incurred against The Port of Portland.

(See opinion of December 14, 1914.)

Portland, Oregon, February 7, 1916. G. H. Marsh, Clerk, by K. F. Frazer, Deputy.

And afterwards, to wit, on Monday, the 7th day of February, 1916, the same being the 65th judicial day of the Regular November, 1915, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER SUSTAINING OBJECTIONS TO COST
BILL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN,

Libellant,

vs.

THE "THIELBEK,"

Respondents.

IN THE MATTER OF THE OBJECTIONS OF THE PORT OF
PORTLAND TO THE COST BILL FILED AGAINST
IT BY THE LIBELANT.

This matter having been heretofore argued and submitted by counsel and the court now being fully advised in the premises, it is ordered and adjudged that said objections be and they are hereby sustained.

R. S. BEAN, Judge.

Portland, Oregon, February 7, 1916.

Filed February 7, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 15th day of February, 1916, there was duly filed in said Court, a Stipulation as to Amount of Damages, in words and figures as follows, to wit:

STIPULATION AS TO AMOUNT OF DAMAGES.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE PORT OF PORTLAND, a municipal corporation, and WILHELM WILHELMSSEN, claimant of the Norwegian steamer "Thode Fagelund,"
Appellants,

vs.

KNOHR & BURCHARD, Nfl.,
Libelant and Appellee.

It is stipulated, for the purpose of this appeal, that the amount of appellee's damages is the sum of \$12,874.26, with interest at six per cent per annum from the 20th day of October, 1913, till paid, and costs, without regard to the liability of any party hereto.

Dated February 14, 1916.

WIRT MINOR,
Proctor for The Port of Portland.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

ERSKINE WOOD,
Proctor for Knohr & Burchard, Nfl.

Filed February 15, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 13th day of February, 1916, there was duly filed in said Court, a Stipulation as to Apostles on Appeal, in words and figures as follows, to wit:

STIPULATION AS TO APOSTLES ON APPEAL.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN, owner of the steamship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK," and THE PORT OF PORTLAND,

Respondents.

Stipulation between the proctors for Wilhelm Wilhelmsen, the libellant; Knohr & Burchard, Nfl., the claimant, and The Port of Portland, respondent in the above entitled cause as to the papers, proceedings and evidence which the Apostles on the appeal of the said The Port of Portland to the United States Circuit Court of Appeals for the Ninth Circuit shall contain, entered into in pursuance of Section 3 of Rule 4 of Rules in Admiralty of said Circuit Court of Appeals.

It is hereby stipulated by and between W. C. Bristol, proctor for Wilhelm Wilhelmsen, the libellant; Wood, Montague & Hunt and Erskine Wood, proctors for the claimant Knohr & Burchard, Nfl.; and Teal, Minor & Winfree and Wirt Minor, proc-

tors for The Port of Portland, respondent in the above entitled cause, that the Apostles on the Appeal of The Port of Portland, respondent in this cause, shall contain:

(1) A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed, whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner or commissioners, and if so, the result of the proceedings and report therein; the date of the entry of the interlocutory and final decrees; and the date when the notice of appeal was filed.

(2) All the pleadings, with the exhibits annexed thereto.

(3) All the testimony and other proof adduced in this cause except depositions of Bernard Meier, Bert Yegg, and Ole Olaffsen, taken on behalf of libelant Wilhelm Wilhelmsen before A. W. Person; all the depositions taken before A. C. Bowman at Seattle, Washington; depositions of Capt. M. B. Hansen, with exhibits thereto attached taken before A. W. Person April 16, 1914; testimony of witnesses

L. Veysey, Allyn, Tomissen, Brauch, Capt. J. L. Smith, Stayton and McNulty, taken in court by Miss Mary E. Bell; all of the exhibits attached to depositions of Captain Bergmann and others taken before Katherine Beck Irvine, October 10, 1913; all other exhibits except the following which shall be included: Libelant's (Wilhelmsen's) exhibits 1, 4, 5, 6, 7, 10 and 13, 11 and 12, 14, 15, 16 (same as libelant's exhibit No. 7, A. W. P.), Knohr & Burchard's exhibits Nos. 1, 5 and 7; The Port of Portland exhibits Nos. 1, 2, 5 and 6, and claimant's exhibit No. 2 (A. W. P.).

(4) The exceptions of the libelant Wilhelm Wilhelmsen, to certain portions of the answer of The Port of Portland.

(5) The order of the District Court upon the exceptions filed on behalf of Wilhelm Wilhelmsen, libelant, to certain portions of the answer of The Port of Portland.

(6) The exceptions of the claimant Knohr & Burchard, Nfi., to certain portions of the answer of The Port of Portland.

(7) The order of the District Court upon the exceptions of Knohr & Burchard, Nfi., to certain portions of the answer of The Port of Portland.

(8) The interlocutory decree entered in this cause and any and all other orders in the District Court of the United States for the District of Oregon, made in this cause and all opinions of said Court rendered in this cause and all orders of said

District Court made and entered in certain other causes, to wit:

"That certain cause in said court entitled: Knohr & Burchard, Nfl., libelant, vs. The Steamship 'Thode Fagelund' and The Port of Portland, respondents, No. 6111.

"That certain cause in said court entitled W. R. Grace & Co., libelants, vs. The German Bark 'Thielbek' and The Port of Portland, respondents, No. 6129.

"That certain cause in said court entitled: E. I. duPont de Nemours Powder Company, libelant, vs. The German Bark 'Thielbek' and The Port of Portland, respondents, No. 6130.

"All opinions of said District Court rendered in said causes and in any of said causes."

(9) The final decree in this cause and the notice of appeal in this cause.

(10) The assignments of error in this cause.

Dated at Portland, Oregon, this 14th day of February, 1916, without prejudice or objection to move to dismiss and affirm.

W. C. BRISTOL,

Proctor for Wilhelm Wilhelmsen, without prejudice or objection to move to dismiss appeal.

WOOD, MONTAGUE & HUNT,
ERSKINE WOOD,

Proctors for Knohr & Burchard, Nfl.

TEAL, MINOR & WINFREE,

Proctors for The Port of Portland.

Filed February 15, 1916. G. H. Marsh, Clerk.

152 *The "Thielbek" and the "Thode Fagelund"*

*In the District Court of the United States for the
District of Oregon.*

July Term, 1913.

Be it remembered, that on the 13th day of September, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Libel, in words and figures as follows, to wit:

LIBEL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelant,

vs.

The Norwegian steamship "THODE FAGELAND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

TO THE HONORABLE CHARLES E. WOLVERTON AND TO THE HONORABLE ROBERT S. BEAN, JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON, SITTING IN ADMIRALTY:

The libel of Knohr & Burchard, Nfl., of Hamburg, Germany, against the Norwegian steamer "Thode Fagelund," her engines, boilers, tackle, apparel and furniture, and all persons intervening for their interest in the same, and against The Port of Portland, a municipal corporation of the State

of Oregon, in a cause of collision, civil and maritime, says:

ARTICLE I.

That the libelants are a corporation limited, organized under the laws of Germany, and are and were at the time of the events herein narrated the owners of the four-master German steel bark "Thielbek," and reside at Hamburg, Germany, the home port of said vessel, and bring this libel as owners of said vessel.

ARTICLE II.

That said bark is a four-masted steel vessel about 308 feet long, 45 feet beam, of a gross tonnage of 2831, and a net tonnage of 2644, and was, at the time of the happening of the events herein narrated, in good condition and seaworthy and equipped with a full complement of officers and men.

ARTICLE III.

That The Port of Portland is a municipal corporation organized and existing under a special charter from the State of Oregon and the amendments thereto, with the power and duties, among other things, of operating a towage and pilotage service on the Columbia and Willamette Rivers from Portland to the sea and return, and is the owner of the steamboat "Ocklahama" and uses said steamboat for the purpose of towing vessels in the performance of its said duties.

ARTICLE IV.

That on Saturday night, August 23, 1913, the "Thielbek" lay at anchor at Young's River, just

below Astoria, in ballast preparatory to being towed up the Columbia and Willamette Rivers to Portland for the purpose of taking a cargo of grain from Kerr, Gifford & Company, to whom she was under charter. That she applied to The Port of Portland for a tug, and about ten-thirty that evening The Port of Portland's steamboat "Ocklahama" came alongside, but the two vessels did not commence the voyage up the river until about five minutes past three the next morning, at which time, the tide and conditions being favorable, the "Ocklahama" was by her crew lashed on the port quarter of the "Thielbek" with her stern projecting beyond the stern of the "Thielbek," and the two vessels, proceeding as one and under the sole control of the "Ocklahama," commenced their voyage up stream through the harbor at Astoria. That the night was clear, and lights and objects were easily discernible, the water still and there was little or no wind, and the tide was just commencing to flood; that the lights required by the rules of navigation on the two vessels were all set according to rule and burning brightly; a lookout was stationed on the bow of the "Thielbek," the first and third mates were on watch, and a quartermaster was stationed at the wheel, keeping the helm amidship and doing no steering, all in accordance with the orders of the pilot of the "Ocklahama," Roy Pease, who was in charge; on the "Ocklahama," Roy Pease, who was pilot, had the wheel and was in general charge of both vessels, a watchman was on duty with him in the pilot

house, and the assistant engineer was at the engines; Captain Turppa, master of the "Ocklahama," was in his bunk in the texas, a few feet aft of and adjoining the pilot house, but was not asleep and heard the whistles hereinafter mentioned.

ARTICLE V.

That the United States Government dredge "Chinook" was lying at anchor in the harbor of Astoria with her stem near the northern edge of the ship channel, which is here from a thousand (1,000) to fifteen hundred (1,500) feet wide, and her stern pointing toward Astoria; the "Chinook" is about 450 feet long, and was lying diagonally across the channel; the space between her stern and the Astoria docks was, approximately, seven (700) or eight (800) hundred feet, and it was through this space that ingoing or outgoing vessels had to pass.

ARTICLE VI.

The "Ocklahama," with the "Thielbek" in tow, having weighed anchor at Young's River about three minutes past three as aforesaid, proceeded with her tow as one vessel up stream, keeping close in towards the Astoria docks, to wit: about two hundred (200) feet off, and when close to Calendar Dock in the City of Astoria, the pilot of the "Ocklahama" sighted the Norwegian steamer "Thode Fagelund" beyond and over the dredge "Chinook" and evidently proceeding down stream; at this time he could see the lights of the "Thode Fagelund" but not her hull, and she was approximately from fifteen

hundred (1,500) to two thousand (2,000) feet away; the "Ocklahama" was immediately put under a slow bell, and a few seconds thereafter the "Thode Fagelund" blew two (2) whistles, signifying her desire to pass the "Ocklahama" and tow on her starboard hand; the "Thode Fagelund" was at this time still behind the "Chinook," showing to the "Ocklahama" her green side light and two white range lights, and was proceeding on a course diagonally across the course of the "Ocklahama" and "Thielbek," which at this time showed their red side light to the "Thode Fagelund," the "Ocklahama" and "Thielbek" being at that time on her starboard hand; the "Ocklahama" did not answer the first signal of the "Thode Fagelund" for the reason that it was apparent to the pilot of the "Ocklahama" that in a few seconds the "Thode Fagelund" would emerge from behind the "Chinook" when he would then be able better to take in the whole situation, but the helm of the "Ocklahama" was put to starboard and she and the "Thielbek" immediately commenced to swing to port; that in a very short time, to wit: twenty (20) or thirty (30) seconds, the "Thode Fagelund" came into the clear from behind the stern of the "Chinook" and, showing her green light and two mast head range lights, again blew two (2) whistles signifying her continued intention to pass to the starboard of the "Ocklahama" and tow; at this time, libelants believe and therefore say that the only side light of the "Ocklahama" and tow visible to the "Thode Fagelund" was the red light; this signal the

"Ocklahama" immediately answered by two (2) whistles, signifying her assent to the passage; at or just before this exchange of signals, the engines of the "Ocklahama" were stopped, and at this exchange of signals her engines were backed half speed, and immediately thereafter full speed astern, and her helm was thrown to port, which, by reason of the reversed paddle wheel throwing the water against the rudders, threw the stern of the "Ocklahama" and "Thielbek" to the starboard and their bows to port; that the "Ocklahama" continued backing full speed from this time until the collision, and by alternately porting and steadying her helm, hold the course of herself and tow for the stern of the "Chinook," leaving the whole width of the channel from the stern of the "Chinook" to the Astoria docks as room through which the "Thode Fagelund" could pass in accordance with the signals given and received; the "Thode Fagelund," however, instead of proceeding in accordance with the signals exchanged and passing on the starboard side of the "Ocklahama" and tow, continued to alter her course more and more to her own starboard side and in the direction of the "Ocklahama" and tow, and a short time before the collision showed her red light to the "Ocklahama" and tow; and while the "Ocklahama" and tow, in their effort to escape the oncoming "Thode Fagelund," were headed so far to their own port that they could just about clear the stern of the "Chinook," and while the "Thode Fagelund" was on a course showing her red light to the "Ock-

lahama" and tow, the "Thode Fagelund" and "Thielbek" collided a very short distance, to wit, from seventy-five (75) to one hundred fifty (150) feet and slightly down stream from the stern of the "Chinook," the "Thielbek's" stem striking the port bow of the "Thode Fagelund" a few feet abaft the stem; that a danger signal was blown by the "Thode Fagelund," and one of her anchor chains was heard running out a very few seconds before the collision, but so close to the collision as to be practically simultaneous therewith.

ARTICLE VII.

That as a result of the collision, the bow plates of the "Thielbek" were stove in on the starboard side, and on the port side were bent and displaced so as to necessitate renewing them on both sides, and a hole was cut on the port side of the "Thode Fagelund" from her deck to below the water line; the tug "Ocklahoma" escaping without damage.

ARTICLE VIII.

That libelants are informed and therefore say that the navigation of the "Thode Fagelund" was in charge of M. B. Hansen, master of the "Thode Fagelund," and Captain Nolan, who is and was one of the pilots employed by the respondent The Port of Portland, and in this instance had been furnished by said Port of Portland to take the said "Thode Fagelund" to sea.

ARTICLE IX.

That the "Thode Fagelund" approached the channel between the stern of the "Chinook" and the

Astoria docks, through which she had to pass, in such a manner that she was not under proper control, and while her officers knew that the "Ocklahama" and "Thielbek" would be coming up stream and were likely to be met in that passage, and was negligent therein; and was negligent in blowing two (2) whistles and attempting to cross the bow of the "Ocklahama" and tow when the red light of the "Ocklahama" was showing to the "Thode Fagelund," and the green light of the "Thode Fagelund" was showing to the "Ocklahama," thus indicating that the vessels were approaching diagonally and that the "Thode Fagelund" had the "Ocklahama" and tow on her starboard hand; but, when that course had been agreed upon by the exchange of signals aforesaid, the "Thode Fagelund" was grossly negligent in altering her course more and more to her own starboard to such an extent that she crowded the "Ocklahama" and "Thielbek" so close to the "Chinook" as to make a collision between these vessels and the "Chinook" imminent, and to such an extent that she received the blow of the "Thielbek" on her port bow. That libelants are informed and therefore say that the "Thode Fagelund" reversed her engines full speed astern shortly before the collision; that if this is true the "Thode Fagelund" was negligent in that she did not blow three whistles to indicate that she was thus backing, as required by the rules of navigation.

ARTICLE X.

As before alleged, the "Thielbek" was entirely under the command and control of The Port of Portland's tug "Ocklahama," and the quartermaster of the "Thielbek" kept her helm steady amidship without alteration during the happening of all the events herein alleged, and the "Thielbek," in every respect, conformed to the orders of the pilot of the "Ocklahama."

ARTICLE XI.

That a libel has been filed in this Court sitting in Admiralty, in cause No. 6111, by Wilhelm Wilhelmsen, owner of the said steamship "Thode Fagelund" against the said "Thielbek," her tackle, etc., and the said The Port of Portland, asking damages from the said "Thielbek" and the said The Port of Portland for injuries to the "Thode Fagelund" received in this collision, wherein it is alleged, among other things, as follows:

"ARTICLE VI.

"That on or about and some time after midnight of Sunday, the 24th day of the month of August in the year 1913, in the Columbia River somewhere below Astoria, within this district and within the jurisdiction of this honorable Court, the said stern wheel steamboat 'Ocklahama,' together with the German bark 'Thielbek,' then being navigated with Archie Pease, Jr., as pilot and in charge, and Isaac Turppa, master of said 'Ocklahama,' off duty and asleep, proceeded together up the Columbia River chan-

nel on the Oregon side to and in front of the port of Astoria, reaching a point somewhat abreast of the dock or wharf of The Oregon-Washington Railroad & Navigation Company in said port of Astoria on the inward-bound voyage of said German bark 'Thielbek' to the port of Portland, there to discharge ballast and load cargo outward for Europe.

“ARTICLE VII.

“That during the said time when the ‘Ocklahama’ and ‘Thielbek’ were so being navigated the weather was clear, the moon bright, the water was calm and the tide was running flood or nearly so; that shipping customarily lies anchored in the channel way at the port of Astoria, and that under the said conditions of wind, tide and weather on an incoming tide said shipping riding at its anchor chains naturally floats athwart the channel way; that all of the conditions of tide, of wind, of weather and of said shipping were known to the officers and crew in charge of and then navigating the ‘Ocklahama’ and the ‘Thielbek,’ and they did know that the United States Government dredge ‘Chinook’ was anchored northward of the fair channel way in the port of Astoria opposite the said wharf or dock of The Oregon-Washington Railroad & Navigation Company, and the said Isaac Turppa and the said Archie Pease, master and pilot respectively of the said ‘Thielbek’ and ‘Ocklahama,’ knew and observed on their down-

ward passage, prior to the events herein propounded, that the 'Thode Fagelund' and the United States Government dredge 'Chinook' were then anchored in the usual channel for outgoing vessels, leaving a sufficient clearway therein; and they did likewise know and observe that the 'Thode Fagelund' was bound seaward fully cargo laden and would naturally proceed down the Columbia River past the port of Astoria on the then expected outgoing flood tide of her voyage.

"ARTICLE VIII.

"That prior to the said Sunday morning of the 24th day of the month of August in the year 1913, the 'Thode Fagelund' had been laden at Portland by her charterers, W. R. Grace & Co., with a full cargo, consisting of one-third of her deck capacity in piling and about two-thirds of her deck capacity in timbers, together with a full hold of dimension and specified lumber stowed below and in the 'tween decks, and beside this some twenty-five tons of dynamite stowed aft for a voyage from the port of Portland in this district to Panama on the Isthmus of Darien, thence to return in ballast to the order of charterers, and being so laden and having duly cleared she left the port of Portland to arrive off the port of Astoria so that she might come to an anchorage off the dock or wharf of the said railroad company in the channelway and avail of the outgoing flood

tide on the morning of Sunday aforesaid for her voyage upon the high seas.

"ARTICLE IX.

"That on or about twenty minutes past the hour of three in the morning of Sunday, the 24th day of the month of August in the year 1913, with M. B. Hansen as master and M. Nolan as pilot, the said 'Thode Fagelund,' being then fully laden as aforesaid and in all respects tight, stanch, strong and in good seaworthy condition and in all respects well officered, well manned, well equipped, well tackled and well supplied, and being then and there carefully and prudently navigated, and with all of her lights properly set, trimmed and burning, and with lookouts and crew properly stationed and placed, weighed anchor and under the direction of her pilot started ahead and toward the mouth of the Columbia River under a slow bell; that at the time the said 'Thode Fagelund' weighed anchor the 'Ocklahama' and the 'Thielbek' were not in sight, but the United States Government dredge 'Chinook' was then swinging with the flood tide athwart the channelway with her stern toward the Astoria side of the channel; that the United States Government dredge 'Chinook' was plainly observable, the sky was clear and unobscured, the tide was about at flood and the moonlight bright, with hardly any wind and the river calm, and under these conditions and at said time the said 'Thode Fage-

lund' having not yet gathered steerage way, but when within about one ship's length from the United States Government dredge 'Chinook,' there was observed by the pilot of the 'Thode Fagelund' about a quarter of a point on her starboard bow the 'Ocklahama' and the 'Thielbek' coming full speed toward said narrow channelway between the stern of the United States Government dredge 'Chinook' and the railroad wharf up said Columbia River at said point and upon a course, under a varying helm, between the stern of the United States Government dredge 'Chinook' and the said railroad wharf, whereupon the pilot of the 'Thode Fagelund' promptly blew two (2) whistles, signaling, under the inland navigation rules of the United States, that a passage was desired to be made on the starboard side of each other, but no answer was given thereto, whereupon the engines of the 'Thode Fagelund' were immediately stopped and two (2) more blasts of the whistle were then given and this time they were answered by the 'Ocklahama' with two (2) blasts of her whistle, which signified a starboard passage, upon which the pilot of the 'Thode Fagelund' then had a right to reply; nevertheless, the said 'Ocklahama' and 'Thielbek' coming upon said flood tide up stream full speed ahead were so navigated, under a varying helm, without prudence and in so careless and negligent a way as to crowd the fair channel-

way between the stern of the said United States Government dredge 'Chinook' and the said railroad wharf, without giving any signal of her approach or even responding to the signals given her by the 'Thode Fagelund' until after the first one had been blown as aforesaid and without giving the 'Thode Fagelund' clearway and distance for her passage to pass on port or starboard side and clear the stern of the United States Government dredge 'Chinook,' and so it was that the engines of the 'Thode Fagelund' were then reversed full speed astern and her pilot blew four (4) whistles, consisting of several short and rapid blasts of the steam whistle, in pursuance of the inland navigation rules, but no answer was given thereto by the said 'Ocklahama,' and thereupon the port anchor with fifteen (15) fathoms of chain was let go from the 'Thode Fagelund' and her headway completely stopped, and again and then her pilot gave four (4) short and rapid blasts of her steam whistle, which were not answered by the 'Ocklahama,' but the said 'Ocklahama' and the said 'Thielbek' came on their varying course without giving any fairway or clearance to the said 'Thode Fagelund' or answering her signals, and in disregard of the inland navigation rules and the duty to preserve a fairway in the channel to a fully laden vessel passing outward, the said 'Ocklahama' and 'Thielbek' struck and collided with the 'Thode Fagelund' while her head-

way was stopped, while her anchor was down with chains as aforesaid and her engines backing full speed, at a time not more than twelve (12) minutes after she had weighed anchor and before she had proceeded more than one thousand (1,000) feet upon her voyage, and the said 'Ocklahama' and 'Thielbek' were then so navigated as to strike and collide with the port bow of the 'Thode Fagelund' at and near the stem thereof, cutting her about ten (10) feet below the water line and forcing her stem to starboard and her bow plates for about nineteen (19) strakes, together with her timber and beams, within said steamship rendering her wholly unseaworthy and unable to proceed upon her voyage.

"ARTICLE X.

"That the said 'Ocklahama' and 'Thielbek' were negligently and carelessly and imprudently navigated in defiance of the established maritime practice, the rules of navigation and the circumstances at the time in this, to wit:

"The said Archie Pease, Jr., in the wheelhouse of the said 'Ocklahama,' was inexperienced and Isaac Turppa was not in the wheelhouse of the 'Ocklahama,' but asleep;

"That no lookout was kept upon the 'Thielbek' or upon the 'Ocklahama';

"That the 'Ocklahama' and 'Thielbek' were navigated with a varying helm; that is to say, said helm was at one time, when a collision to a

reasonable and prudent navigator was obvious, put hard astarboard, while at another time, and just previous to the actual striking and colliding, the helm on said 'Ocklahama' was put hard aport;

"That the 'Ocklahama' did not, in accordance with the inland navigation rules and as required, promptly answer signals given to her or observe and obey the same;

"That when the 'Ocklahama' did answer signals given to her she did not act in accordance and conformity with said signals, but contrary thereto and under a varying helm;

"That in a narrow channel when between the stern of said United States Government dredge 'Chinook' and the said railroad wharf, contrary to law and against the established maritime practice in navigation, said 'Ocklahama' was operated at too high a rate of speed, so high in fact that at the point of impingement the prow of the 'Thielbek' at the time of the striking, when the engines of the 'Ocklahama' are said to have been backing full speed, said prow entered the bow plates of said 'Thode Fagelund' a distance of several feet and to a point some ten (10) feet below the water line as aforesaid;

"That the said 'Ocklahama,' her master and pilot, disregarded and failed to act on or to observe the known position of the United States Government dredge 'Chinook' and that the

'Thode Fagelund' was departing on an outward bound voyage on the turn of the tide;

"That the 'Thielbek,' her master, officers and crew, took no precaution or did or perform anything whatsoever to avert the impact of collision or the striking the 'Thode Fagelund' or to lessen the force and momentum of the blow;

"That the said Archie Pease, Jr., the pilot on the 'Ocklahama,' and the master, officers and crew of the 'Thielbek' did not watch the compass bearing of the approach of the 'Thode Fagelund';

"That when said Archie Pease, Jr., pilot on the 'Ocklahama,' saw the red light of the 'Thode Fagelund' without seeing the green light, he did not act in conformity with established practice of navigation and conduct his vessel as he should have done, to wit, to a safe passing between the 'Thode Fagelund' and the railroad wharf;

"That each and all of the acts last above recited done or omitted by the 'Ocklahama,' her master or pilot, were likewise done and omitted by the said 'Thielbek,' her master, officers and crew;

"That both the said 'Ocklahama' and the said 'Thielbek' took chances in reckless disregard of the positions they were in with respect to the United States Government dredge 'Chinook' and the 'Thode Fagelund' in attempting, while running light and in ballast with an

incoming flood tide to pass astern of the United States Government dredge 'Chinook' while going at a high rate of speed without giving the 'Thode Fagelund' sufficient clearway, either one side or the other, of the then available open channelway;

"And so it was that the said 'Thielbek' and 'Ocklahama' collided with, struck and damaged the 'Thode Fagelund.'

"ARTICLE XI.

"That at the instant when the imminent danger of collision was first perceived there was neither time nor opportunity, ways, means or manner in the navigation or operation of the 'Thode Fagelund' to get out of the way of the oncoming 'Ocklahama' and 'Thielbek,' although it is true that if at the time the 'Thode Fagelund' first signaled the 'Ocklahama' and thenceforth the 'Ocklahama' had kept upon a passing course, then required by the inland navigation rules, and not altered her helm she could and would have cleared the 'Thode Fagelund' between the said railroad wharf and the position the 'Thode Fagelund' was then in, but at the instant that the oncoming 'Ocklahama' and 'Thielbek' could be perceived attempting to cut close to the stern of the United States Government dredge 'Chinook,' in disobedience to the signals given her and in violation of the navigation laws and maritime practice, and between that instant and when the actual impact oc-

curred, the 'Thode Fagelund' had not sufficient steerage way nor other means of locomotion to get out of the way or avoid said collision than those stops and means that were taken at the time."

ARTICLE XII.

That it is the intention of these libelants to ask your Honors that the suit of Wilhelm Wilhelmsen, represented by his said libel, and this suit of Knohr & Burchard, Nfl., against the "Thode Fagelund" and The Port of Portland, represented by the present libel, may, in accordance with the admiralty practice, be consolidated and heard as one suit in order that the matters arising out of this said collision may all be determined in one suit with as little delay and expense to the parties thereto as possible; that if, upon the hearing of the matters propounded in the libel of Wilhelm Wilhelmsen, it should appear that said matters so propounded are true, then the fault for this collision will lie with The Port of Portland as owner of the tug boat "Ocklahama," since the "Thielbek" was entirely under the control and command of said "Ocklahama," and if said matters so propounded in said libel of the said Wilhelm Wilhelmsen should, by your Honors, be found to be true, then these libelants will be entitled to recover their damages from The Port of Portland.

Therefore, these libelants, in order to avoid a multiplicity of suits, have brought this libel against The Port of Portland, and now availing themselves

of the admiralty practice of pleading in the alternative, allege:

That either this collision was caused by the fault of the "Thode Fagelund" as hereinbefore propounded, or that the "Ocklahama" was negligently operated as charged in said libel of Wilhelm Wilhelmsen as fully as if said allegations of negligence were here repeated in full; and especially allege that the "Ocklahama" was left in charge of a young and inexperienced pilot, and that her master was in his bunk while navigating a narrow passage where ships were likely to be met, and that therein The Port of Portland was at fault; that the "Ocklahama" and tow approached said passage at full speed, and that therein The Port of Portland was at fault; that the pilot of the "Ocklahama," upon receiving the first whistle from the "Thode Fagelund," put her helm to starboard and failed to answer said first whistle of the "Thode Fagelund," and in so doing was negligent, and therein The Port of Portland was at fault; that the "Ocklahama" was negligently navigated in that no signal was given that her engines had been put full speed astern.

ARTICLE XIII.

That by reason of the collision as aforesaid, the "Thielbek's" bow was smashed in, her plates broken and bent, rendering her utterly unfit to proceed to sea, and a quantity of salt meat, ship's paint, ropes, blocks and other articles stowed in her forepeak were destroyed, and her ship's scrubber, also there stored, was damaged.

ARTICLE XIV.

That in addition to the actual cost of repairing said vessel, it will take about twenty-five (25) days to repair her, during which time she will lose the benefit of her charter hire; that a survey of her damages was necessary, and was made in order to determine what repairs were needed; that in addition to the foregoing the "Thielbek," by reason of said collision, has had other additional expense, port charges, agent's fees and underwriter's fees, the exact extent of which are as yet undetermined.

ARTICLE XV.

As nearly as can be ascertained at this time, it will cost seven thousand two hundred fifty (\$7,250.00) dollars to repair the stem of said vessel, but that said cost may run up to more than ten thousand (\$10,000.00) dollars; that by reason of her lost time, during which repairs are made, said vessel will be off charter hire which she otherwise would have earned, and said charter hire for said time so lost amounts to a large sum of money, to wit, between four (\$4,000.00) and five (\$5,000.00) thousand dollars; that the cost of replacing the meat, paints, ropes, blocks and other articles lost or damaged as aforesaid, is seven hundred fifty (\$750.00) dollars; that the cost of the marine survey of her damages is as yet unknown to libelants, as are also the other port charges and agent's fees above mentioned, but libelants allege that they will amount to approximately one thousand (\$1,000.00) to fifteen hundred

(\$1,500.00) dollars; and that libelants have been damaged in the sum of seventeen thousand two hundred fifty (\$17,250.00) dollars; that libelants reserve the right to allege other and more extensive damages if, upon further investigation, such damages are found to have been suffered.

ARTICLE XVI.

That the 'Thode Fagelund' is now lying in the Willamette River, Oregon, within the jurisdiction of this Honorable Court.

That the premises all and singular are true.

Wherefore, libelants pray that process in due form of law, according to the practice of this Honorable Court, may issue against the said steamship "Thode Fagelund," her engines, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel; and that a monition, according to the practice of this Court, may issue against the respondent, The Port of Portland citing it to appear and answer on oath the matters aforesaid, and that this Court will hear the evidence which the libelants will adduce in support of the allegations of the libel, and will enter a decree in favor of the libelants for the above mentioned damages, and will order the same to be paid and satisfied out of the proceeds of said steamship "Thode Fagelund" or by the respondent, The Port of Portland, or both of them, together with

interest and the costs of the libel, and will otherwise right and justice administer in the premises.

WOOD, MONTAGUE & HUNT,
C. E. S. WOOD,
ERSKINE WOOD,

Proctors for Libelants.

DISTRICT OF OREGON—SS.

A. Bergmann, being duly sworn, says that he is the master of the German bark "Thielbek"; that he has read the foregoing libel, and believes it to be true.

A. BERGMANN,
Master of the "Thielbek."

Subscribed and sworn to before me this 13th day of September, 1915.

[Seal]

ERSKINE WOOD,
Notary Public for Oregon.

Filed September 13, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on the 4th day of October, 1913, there was duly filed in said Court, an Answer of the claimant of the "Thode Fagelund," in words and figures as follows, to wit:

ANSWER OF CLAIMANT AND
INTERROGATORIES.

*In the District Court of the United States in and for
the District of Oregon.*

IN AMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

The answer of Wilhelm Wilhelmsen for and on behalf of the Norwegian steamship "Thode Fagelund" to the libel of Knohr & Burchard, Nfl., of Hamburg, Germany, for and on behalf of the German bark "Thielbek," in a cause of collision, civil and maritime, is to your honors respectfully presented as follows:

ARTICLE I.

Admits all of the matters and things therein propounded.

ARTICLE II.

Admits all of the matters and things therein propounded, save and except that this answering respondent says that he has no knowledge or information sufficient to form a belief as to whether or not the German bark "Thielbek" was in good condition and seaworthy and equipped with a full complement of officers and men, and in denying this allegation calls for proof of the same.

ARTICLE III.

Admits all of the matters and things therein propounded.

ARTICLE IV.

Denies all of the matters and things propounded in Article IV of said libel, save and except as a part of the same may be substantially within the intendment of the libel hereinbefore filed by this answering respondent against said "Thielbek"; but this answering respondent specifically denies that the lights required by the rules of navigation on the "Thielbek" and "Ocklahama" were all set according to rule and burning brightly or set at all; denies that a lookout was stationed on the bow of the "Thielbek"; denies that the man at the wheel kept the helm amidship and did no steering, though it may be that his acts in this respect were in accordance with the orders of the pilot of the "Ocklahama"; admits that the Roy Pease referred to as pilot of the "Ocklahama" is the same Pease that is intended to be referred to under the name of Archie

Pease, Jr., in the libel of this answering respondent against said "Thielbek"; but whether it was the assistant engineer at the engines of the "Ocklahama" this answering respondent does not know and calls for proof thereof; but as for there being a watchman on duty with Roy Pease in the pilot house of the "Ocklahama," this answering respondent says it may have been the duty of a watchman to have been with said Roy Pease in the pilot house of the "Ocklahama," but said watchman was not in said pilot house at and before the collision; and denies that Captain Turppa was not asleep; and denies that Captain Turppa heard the whistles in the libel thereafter mentioned, for it is true, as more particularly charged in lines 6, 7 and 8 of page 17 of Article XII of said libel of said "Thielbek" that the said Turppa was in his bunk while his boat, the "Ocklahama," was navigating a narrow passage where ships were likely to be met, and it is and was as therein stated the fault of The Port of Portland in respect of the matters and things in said Article IV of said libel charged against this answering respondent and his ship, and it is not true, as the libelant would not have it believed, that Turppa, although in his bunk, was observant of the navigation of his vessel in a proper manner and under proper control.

ARTICLE V.

Admits the matters and things propounded in Article V of said libel, save and except that it is not therein stated, as it should be, whether the

stern of the dredge "Chinook" was lying upstream or downstream, although it is alleged in said libel that the said "Chinook" was "lying diagonally across the channel," and in this respect said article is indefinite and this answering respondent says that to the best of his information and belief the stern of said dredge "Chinook" was lying upstream at said time toward the "Thode Fagelund," the ship of this answering respondent, and in such manner that the dredge "Chinook" was heading across said channel in a northwesterly direction with her position constantly changing on the incoming tide as she was riding light so that her stern gradually proceeded upstream and her head bore more gradually westerly and more to the west than to the northwest at the time of the collision.

ARTICLE VI.

Denies each and every matter and thing propounded in Article VI of said libel, save and except those facts which are likewise stated in the libel of the "Thode Fagelund" against the "Thielbek"; and specifically denies that the "Ocklahama" at the times therein propounded was put under a slow bell; and specifically denies that the "Thode Fagelund" blew two whistles signifying a desire for a starboard passage while she was still behind the dredge "Chinook"; and denies that the "Thode Fagelund" was proceeding on a course diagonally across the course of the "Ocklahama" and "Thielbek" at the time of the first signals of the "Thode Fagelund" to the "Ocklahama" as alleged in the libel

hereinbefore filed by this answering respondent against the "Ocklahama" and Thielbek," but the fact is that said vessels were proceeding head and head or nearly so and so nearly so that the "Thielbek" and "Ocklahama" when first seen could and should have negotiated the passage that was signaled to them and which was afterwards answered and assented to by them; and specifically denies that the pilot of the "Ocklahama" waited to answer the first signal for the "Thode Fagelund" to emerge from behind the "Chinook," for at the time of giving said signal the "Thode Fagelund" was in the clear, and this answering respondent says that the said Roy Pease, pilot on the "Ocklahama," then at that time committed a fault of navigation and that the said "Thielbek" and "Ocklahama" were faultily and negligently navigated in this, that had said Roy Pease been an experienced pilot he would have and should have given the first signal of an intention to pass, they being the lighter vessels and more easily directed and navigated, and if it be true that the said pilot Pease then put his helm to starboard and that the "Ocklahama" and "Thielbek" immediately commenced to swing to port, then it is likewise true, as in the libel against the "Thielbek" in cause No. 6111 alleged, that he did not hold his helm, for had he done so he would have cleared the "Thode Fagelund" upon the course signaled by her and assented to by the said Roy Pease; denies that at or just before the first signal the engines of the "Ocklahama" were stopped or were backed half speed or

immediately after the second exchange of signals they were backed full speed, although it is admitted that she was operated under a varying helm, but it is denied that the "Ocklahama" was backing full speed at the time of the collision; and it is denied that she held the course of herself and tow for the stern of the "Chinook"; and it is denied that she left the whole width of the channel from the stern of the "Chinook" to the Astoria docks for the "Thode Fagelund" to pass; it is specifically denied that the "Thode Fagelund" did not proceed in accordance with her signals exchanged and that she continued to alter her course, but on the contrary this answering respondent says that the "Thode Fagelund" never did change her course and that it is and was as alleged in the libel in cause No. 6111, at the time of the collision and for a considerable time prior thereto, the "Thode Fagelund" had no headway, her anchor chain was down and her propeller running full speed astern, and if it be true that the said Turppa, as alleged in the libel of the "Thielbek," although in the Texas, was awake and heard the whistles and that the said Roy Pease was navigating the "Ocklahama" properly, then they both heard, long before the collision, the alarm whistles consisting of four rapid blasts given twice at intervals as provided by the inland navigation rules and were thereby aware of the position of the "Thode Fagelund," and it is not true that she changed or altered her course in the direction of the "Ocklahama" and tow; that it is not true that

the "Thode Fagelund" continued to alter her course as alleged in said libel more and more to her own starboard side, but the fact is that just a short interval of time before the collision, and while the "Thode Fagelund" was stopped and her anchor down and was swinging with the motion of her wheel so that the red light may have come into view, the "Ocklahama" never altered her course, but navigated the "Thielbek" and herself directly into the port bow of the "Thode Fagelund" at a high rate of speed and in the manner as alleged in the libel in cause number 6111 and so that the "Ocklahama" broke her hawsers and ran up alongside the "Thode Fagelund" to about a midship position; denies that at this time the positions were such that the "Ocklahama" and "Thielbek" could only just about clear the stern of the dredge "Chinook" or that there was only a distance of 75 to 150 feet between the stern of the "Chinook" and the "Thielbek," but on the contrary the fact is that there was a channelway and room for passage on that side of the "Thode Fagelund" and between her and the dredge "Chinook" of at least two hundred (200) feet.

And still further answering Article VI, having regard to the admission that the danger signal blown by the "Thode Fagelund" was heard, and again asserting herein as part of this answer that two such danger signals were blown instead of one, and having regard to the admissions that the anchor chains were heard running out a few seconds before

the collision, but denying that either the signal or the anchor chain running was practically simultaneous with the collision, but alleging that said anchor chain was run prior to the collision long enough to stop the headway of the "Thode Fagelund" and in pursuance of Section 4487 of Revised Statutes of the United States, it is now propounded and shown that in Article XII of said libel, page 17 thereof, and to that extent and for a more full answer to the allegations of said libel, this answering respondent says that Knohr & Burchard, the libelants, allege:

(Lines 4 to 17, page 17, libel in cause No. 6116, Article XII.)

"Especially allege that the "Ocklahama" was left in charge of a young and inexperienced pilot, and that her master was in his bunk while navigating a narrow passage where ships were likely to be met, and that therein in The Port of Portland was at fault; that the "Ocklahama" and tow approached said passage at full speed, and that therein The Port of Portland was at fault; that the pilot of the "Ocklahama," upon receiving the first whistle from the "Thode Fagelund," put her helm to starboard and failed to answer said first whistle of the "Thode Fagelund," and in so doing was negligent, and therein The Port of Portland was at fault; that the "Ocklahama" was negligently navigated in that no signal was given that her engines had been put full speed astern."

And these being the facts as so charged, then it cannot be true that the "Ocklahama" did the things which are alleged in paragraph VI of said libel, and so, without further answering, respondent says that the circumstances and occurrences propounded in said Article VI did not occur or come about by anything that was done by the "Thode Fagelund."

ARTICLE VII.

Admits that the "Thielbek" was in some wise injured, but denies that the "Thielbek" was injured by anything that the "Thode Fagelund" did, and with this exception all the other matters and things propounded in Article VII of said libel are admitted.

ARTICLE VIII.

Admits the matters and things therein propounded, save and except that it is denied that the navigation of the "Thode Fagelund" was in the charge of M. B. Hansen, master of the "Thode Fagelund," for the fact is that the navigation of said "Thode Fagelund" was solely and only in charge of Michael Nolan, one of the pilots in the employ of The Port of Portland, and that said Michael Nolan had been furnished by The Port of Portland to take the said "Thode Fagelund" to sea, and this answering respondent says that if there is any negligence or fault of navigation attributable to the "Thode Fagelund" that the responsibility therefor lays with The Port of Portland.

ARTICLE IX.

Denies each and every matter and thing therein propounded.

And in connection with said article this answering respondent excepts and objects to the insufficiency thereof in this regard, to-wit: That it does not appear in said article, nor is it alleged or propounded, what the manner was or what acts or things were done or omitted to be done that show or tend to show that the "Thode Fagelund" "was not under proper control" as alleged in said article, and this answering respondent says that if the libelants will allege facts and circumstances showing or tending to show that the "Thode Fagelund" was not under proper control that this respondent will answer the same, but that the same are not now alleged or shown in said article, nor is it alleged and shown in what manner or under what control it is claimed that the "Thode Fagelund" should have approached the channel between the stern of the "Chinook" and the Astoria dock, and this answering respondent says that the allegation in form as made is not sufficient to charge this respondent with making any other or different answer thereto and he therefore excepts to the same.

ARTICLE X.

Denies each and every matter and thing therein propounded.

ARTICLE XI.

Admits the whole of the same as propounded.

ARTICLE XII.

That there is no manner of answer or defense required by this answering respondent to the matters and things set forth in Article XII, as there is

not therein any matter or thing of admiralty or maritime jurisdiction propounded against this respondent or his ship, the "Thode Fagelund," but if it be the judgment and order of your honors that the causes 6111 and 6116 in this Court be consolidated because of the independent libels and heard as one one suit, then for so much as this answering respondent may be required on the face of the libel in cause 6116 now to answer, it is

Denied that the collision was caused by the fault of the "Thode Fagelund" as in said libel in any wise propounded, but it is admitted, as indeed it is charged in the libel of this respondent in cause number 6111, that the "Ocklahama" was negligently operated as therein set forth, and in addition thereto this answering respondent, as part of his answer upon consolidation, if the same is made, and to join with the libel of the said "Thielbek" in cause number 6116 against The Port of Portland, propounds and articulates and says it is true as in said libel charged, namely:

(a) That the "Ocklahama" was left in charge of a young and inexperienced pilot, to-wit, Roy Pease;

(b) That her master, Isaac Turppa, was in his bunk while his vessel was navigating a narrow passage where ships were likely to be met;

(c) That the "Ocklahama" and "Thielbek" approached the narrow passage between the stern of the dredge "Chinook" and the Astoria docks, wherein the "Thode Fagelund" then was, at full speed and without reducing speed;

(d) That the said Roy Pease, the pilot of the "Ocklahama," upon receiving the first whistle from the "Thode Fagelund," failed to answer;

(e) That the "Ocklahama" did not signal at any time that her engines were full or half speed astern;

(f) That the "Ocklahama" did not signal at any time otherwise than to give her assent to a star-board passage; and that in each of said particulars The Port of Portland was at fault, and of the matters herein propounded this answering respondent craves consideration of your honors reserving the right to amend his libel at first instance in conformity thereto.

ARTICLE XIII.

Denies any knowledge or information sufficient to form a belief as to whether or not the fact is as therein propounded and therefore denies the same and calls for proof thereof.

ARTICLE XIV.

Denies any knowledge or information sufficient to form a belief as to whether the matters and things therein propounded are true or not and therefore denies and calls for proof of the same.

ARTICLE XV.

Denies any knowledge or information sufficient to form a belief as to whether the matters and things therein propounded are true or not and therefore denies and calls for proof of the same.

ARTICLE XVI.

Admits the matters and things therein propounded.

ARTICLE XVII.

And this answering respondent here reiterates and alleges as part of his answer hereto all the matters and things in his libel in cause number 6111 hereinbefore referred to and on file in this Court as fully and completely as if the same had been filed in this cause and to the end that this Court may here consider this case, make complete investigation and have full consideration of the same and all of the facts therein propounded.

ARTICLE XVIII.

Whether the cause at first instance upon either libel or the consolidation cause is made issuable and triable in this Court upon the theory of vessels approaching head and head or nearly so, or whether it should be upon that other and different claim that the vessels involved were approaching upon diagonal courses, this respondent propounds and says, as part of his answer hereto, that in any or either event and regardless of how the issue is made up, the "Thode Fagelund" was in fact the burdened vessel, for that she was heavily laden and known by those operating the "Thielbek" and "Ocklahama" to be upon her way to sea and seen by the "Thielbek," as they allege and propound, long before there was any danger of a collision, and at said times the "Thode Fagelund" with the conditions of the dredge "Chinook" then in the channel and from her anchorage being compelled to execute a maneuver around or by the stern thereof, all of which was well known to the "Thielbek" and "Ocklahama," it is charged

and alleged to be the fact that the said pilot of the "Ocklahama" and those on the "Thielbek," being well aware of the conditions at said time, should not now be heard or allowed to say, nor should The Port of Portland be now heard or allowed to say, that the "Thode Fagelund" did or committed anything or omitted or failed to do anything at the time of the collision or immediately prior thereto which caused or contributed to the same, for that anything the "Thode Fagelund" did or could have done would not have prevented said collision, and if the "Thode Fagelund" had omitted to do the things she did do it would not have prevented the collision, but the same and the cause thereof is solely and only due to the failures and omissions of the "Ocklahama" and the "Thielbek" as in this answer and in the libel at first instance propounded, reference being had to Rule XI and Article 27 of the Pilot and Sailing Rules, approved by the Acts of Congress.

Wherefore, the "Thode Fagelund" prays that the libel of Knohr & Burchard, Nfl., be dismissed with costs to them and for such different, other, further and more extensive relief as your honors may find right and justice to accord when administered in the premises.

INTERROGATORIES PROPOUNDED BY THE
RESPONDENT TO BE ANSWERED BY
THE LIBELANTS.

And this answering respondent propounds the following interrogatories to the libelants pursuant

to the rules of admiralty in such cases made and provided and the practice of this Court demanding answer thereto under oath:

FIRST INTERROGATORY.

For how much and with whom is your ship "Thielbek" insured?

SECOND INTERROGATORY.

For how much and with whom did you agree to have your ship towed?

THIRD INTERROGATORY.

Was this towage service, if engaged, a continuing contract to take the ship in ballast from and with cargo back to the sea?

FOURTH INTERROGATORY.

Who was to perform that service?

FIFTH INTERROGATORY.

Was there any limitation or condition placed by anyone with whom you contracted for this service upon the service to be performed in any respect whatsoever, and if so state what limitation?

SIXTH INTERROGATORY.

Was the contract for this service in writing, if so set it forth at large?

SEVENTH INTERROGATORY.

If your ship was left by the tug "Wallula" on her inward passage at an anchorage four miles west of Astoria, how far was she north and west of buoy No. 5 at said anchorage and before being moved therefrom by the "Ocklahama"?

EIGHTH INTERROGATORY.

How many previous trips has your vessel made to the port of Portland?

NINTH INTERROGATORY.

From your anchorage in the lower river below Astoria on August 24, 1913, state the courses upon which your pilot navigated your vessel "Thielbek" to the point of collision.

TENTH INTERROGATORY.

Did you at any time take a compass bearing of the position of the dredge "Chinook" and/or of the "Thode Fagelund" during the journey from your anchorage to the point of collision, and if so when and what was it?

ELEVENTH INTERROGATORY.

Was there any lookout on the "Ocklahama" or was the only lookout you had the sailor Gerdes?

TWELFTH INTERROGATORY.

Did you have anybody upon your ship so stationed that he could see everything on both sides of your ship and the tug and who from that position could and did directly communicate with the man at the wheel of the tug, and if so who was it?

If you answer the last interrogatory by stating that you had no one but the man Gerdes on the lookout, then state whether the tug supplied you with any man for that purpose and if so whom, or whether the tug "Ocklahama" had any one of her crew or men or officers on your ship at the time she was being navigated?

THIRTEENTH INTERROGATORY.

Please state and show fully how it is that if, as you allege in your libel, you proceeded up the river with your tug close to the Astoria shore and not more than 200 feet off that you came into close proximity of or could not clear the stern of the dredge "Chinook," which at the time you arrived opposite to it was some 800 feet off the Astoria shore?

FOURTEENTH INTERROGATORY.

How far was your ship and the tug boat "Ocklahoma" off the Astoria shore when the tug "Ocklahoma" first blew two whistles in answer to the second signal of the "Thode Fagelund"?

FIFTEENTH INTERROGATORY.

State whether Pease, the pilot, steered your ship and his tug boat by objects seen on the shore and not by the compass. If your ship was steered by objects on the shore, opposite what objects on shore were your courses changed as your ship came up the river?

SIXTEENTH INTERROGATORY.

Is it not the fact that the responsibility resting upon your pilot Roy Pease on the morning of August 24, 1913, and after 3 o'clock and up to the time of the collision in taking your ship in a frequented channel where other vessels were likely to be met and upon an upstream tide and under the circumstances surrounding you and your ship that morn-

ing and in doing the things he did was too heavy and too extraordinary for his experience and ability?

SEVENTEENTH INTERROGATORY.

If your ship and its tug considered together are claimed by you to be the privileged vessel and you were proceeding upstream 200 feet off the Astoria docks, why did you not hold your course?

EIGHTEENTH INTERROGATORY.

If your ship and its tug considered together are claimed by you to be the privileged vessel and you were proceeding upstream 200 feet off the Astoria docks, why did you assent to change your course by answering the second whistle of the "Thode Fagelund"?

NINETEENTH INTERROGATORY.

If your ship and its tug considered together are claimed by you to be the privileged vessel and you were proceeding upstream 200 feet off the Astoria docks, why were you gradually changing your course to the northerly side of the channel, as you claim you did, when the distance between the Astoria docks and the point of collision was as much as two lengths of your ship clear passageway and more than 200 feet off said docks?

TWENTIETH INTERROGATORY.

State if your master permitted your ship "Thielbek" to be taken by the "Ocklahama" in tow on August 24, 1913, without the master of the "Ocklahama" being on duty either on your ship or on his tug?

TWENTY-FIRST INTERROGATORY.

Explain in what way it was not safe or in what way it was not practicable for the "Thielbek" and "Ocklahama" to keep to that side of the fairway or mid channel on August 24, 1913, which lay on the starboard side of your vessel.

TWENTY-SECOND INTERROGATORY.

And if you say you did do this or that your tug intended to do this with your ship, then why did you head across the channel for the stern or just so as to clear the stern of the dredge "Chinook"?

TWENTY-THIRD INTERROGATORY.

Is it not a fact that your ship and tug kept on a constantly varying course more and more to the northward of the upstream channel and to your port in the expectation that you would meet the "Thode Fagelund" heavily laden coming down from behind the dredge "Chinook" naturally taking the south side of the channel as she came around the dredge "Chinook."

TWENTY-FOURTH INTERROGATORY.

Is it not the fact that your vessel and your tug were riding light and easily and quickly handled on the morning of the collision?

TWENTY-FIFTH INTERROGATORY.

As your vessel and your tug was proceeding up the river with the dredge "Chinook" first observed bearing off your port bow and the green light and mast head lights of the "Thode Fagelund" observ-

able from the starboard quarter of your ship, why did you refuse to answer the first signal of the "Thode Fagelund" when given?

TWENTY-SIXTH INTERROGATORY.

After the "Ocklahama" did answer and assent to the signal of the "Thode Fagelund," why did you not negotiate your passage in the clearway between the stern of the dredge "Chinook" and the "Thode Fagelund"?

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen
and for the "Thode Fagelund."

UNITED STATES OF AMERICA, }
State and District of Oregon. } ss.

I, William C. Bristol, being first duly sworn on oath depose and say: That I am proctor for Wilhelm Wilhelmsen of Tunsberg, Norway; that he is not now within the district nor within the United States; that M. B. Hansen, the master of the "Thode Fagelund," is on the high seas embarking on a voyage to Australia or thereabouts, and so far as this affiant is informed and believes cannot be reached at this time; that the facts and circumstances upon which the foregoing answer is based have been communicated to me by the master and crew; that I have prepared the foregoing answer to the libel of Knohr & Burchard and believe the matters and things stated in said answer to be true; that I make this verification for and upon behalf of the "Thode Fagelund" and her owner and master;

That the interrogatories attached to said answer and as part of the same have been prepared by me and are presented in good faith and for the purpose of eliciting matters material to the hearing of this cause and are presented with said answer pursuant to the rules in admiralty and the practice of this Court in such cases provided.

WILLIAM C. BRISTOL.

Subscribed and sworn to before me this 27th day of September, 1913.

[Seal]

F. E. GRIGSBY,
Notary Public for Oregon.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 4th day of October, 1913, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for respondent "Thode Fagelund."

C. E. S. WOOD,
Attorney for "Thielbek."

WIRT MINOR,
Proctor for Port of Portland.

Filed October 4, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on the 23rd day of October, 1913, there was duly filed in said Court, an Answer of Libelant to Interrogatories propounded by claimant, in words and figures as follows, to wit:

ANSWER TO INTERROGATORIES.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

These libelants make answer to the interrogatories propounded by the respondent as follows:

TO THE FIRST INTERROGATORY

Libelants say that the "Thielbek" is insured for one hundred and seventy thousand marks in various companies of the Verein Hamburger Assekurateurs.

TO THE SECOND INTERROGATORY

Libelants say that they agreed with The Port of Portland to have the "Thielbek" towed at the regular rate prevailing in this port for a ship of her tonnage.

TO THE THIRD INTERROGATORY

Libelants answer, yes.

TO THE FOURTH INTERROGATORY

Libelants answer, The Port of Portland.

TO THE FIFTH INTERROGATORY

Libelants answer, no.

TO THE SIXTH INTERROGATORY

Libelants answer, no.

TO THE SEVENTH INTERROGATORY

Libelants say that they do not know.

TO THE EIGHTH INTERROGATORY

Libelants answer, one.

THE NINTH INTERROGATORY

Libelants cannot answer, as the navigation was in charge of the pilot in charge on board the "Ocklahama."

TO THE TENTH INTERROGATORY

Libelants answer, no.

TO THE ELEVENTH INTERROGATORY

Libelants say that they do not know what lookout was kept on the "Ocklahama," except they are informed that a watchman was on duty with the pilot in the wheelhouse of the "Ocklahama."

TO THE TWELFTH INTERROGATORY

Libelants say that Gerdes was the only man on the "Thielbek" so stationed that he could see on both sides of both vessels, and the "Ocklahama" supplied no one to the "Thielbek" for lookout and had none of her people aboard the "Thielbek."

TO THE THIRTEENTH INTERROGATORY

Libelants say that the answer is plain from their libel. In obedience to the "Fagelund's" signals, the "Thielbek" and "Ocklahama" left their position about two hundred feet from the Astoria docks and headed over toward the stern of the "Chinook" so that the "Thode Fagelund" could effect the starboard passage she had requested.

TO THE FOURTEENTH INTERROGATORY

Libelants say that they cannot answer for the tug boat "Ocklahama," and the "Thielbek" does not know exactly.

TO THE FIFTEENTH INTERROGATORY

Libelants say that they cannot answer for the "Ocklahama," which had charge of the navigation.

THE SIXTEENTH INTERROGATORY

Libelants decline to answer, for the reason that it calls for an opinion on one of the issues before the Court.

TO THE SEVENTEENTH INTERROGATORY

Libelants say that the "Thielbek" was not navigating, and that they cannot answer for the "Ocklahama."

TO THE EIGHTEENTH INTERROGATORY

Libelants make the same answer.

TO THE NINETEENTH INTERROGATORY

Libelants make the same answer.

TO THE TWENTIETH INTERROGATORY

Libelants say that the master of the "Ocklahama" was on duty when the "Ocklahama" fastened

onto the "Thielbek," but whether he remained on duty during the towage was unknown to the master of the "Thielbek."

TO THE TWENTY-FIRST INTERROGATORY

Libelants say that, so far as they are informed, it would have been quite safe for the "Thielbek" and "Ocklahama" to have kept to their own starboard side of the channel if the "Fagelund" had blown for a port passage and had kept to her own starboard side.

TO THE TWENTY-SECOND INTERROGATORY

Libelants say that the "Ocklahama" was in sole charge of the navigation and libelants cannot answer for the "Ocklahama."

TO THE TWENTY-THIRD INTERROGATORY

Libelants say that the course of the ship and tug was not varying in the sense of uncertainty; it was a steady changing movement swinging to their own port and they cannot answer for the expectations of the pilot of the "Ocklahama."

TO THE TWENTY-FOURTH INTERROGATORY

Libelants answer yes, compared to loaded vessels.

TO THE TWENTY-FIFTH INTERROGATORY

Libelants say that it was not the duty of the "Thielbek" to answer the signals of the "Thode Fagelund" requesting a passage; that this was the duty of the "Ocklahama," and libelants cannot answer for the "Ocklahama."

TO THE TWENTY-SIXTH INTERROGATORY

Libelants say, in their opinion it was because the "Fagelund" had crowded the "Ocklahama" and "Thielbek" too close to the "Chinook" for a safe passage.

WOOD, MONTAGUE & HUNT,
C. E. S. WOOD,
ERSKINE WOOD,

Proctors for Libelants.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

I, Erskine Wood, being duly sworn, say that I am one of the proctors for libelants in this cause; that the foregoing answers to interrogatories are true; that I make this verification because the libelants are not within this jurisdiction.

ERSKINE WOOD.

Subscribed and sworn to before me this 23rd day of October, 1913.

[Seal]

P. P. DABNEY,
Notary Public for Oregon.

Due service of the within answers to interrogatories by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, October —, 1913.

W. C. BRISTOL,
Proctor for "Thode Fagelund."

Filed October 23, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on the 13th day of October, 1913, there was duly filed in said Court, an Answer of The Port of Portland, in words and figures as follows, to wit:

ANSWER OF PORT OF PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

The Port of Portland, respondent in the above entitled cause, brings this its answer to the libel:

ARTICLE I.

Respondent admits each and all of the allegations and all of the matters propounded in Articles I, II, III, IV and V of the libel.

ARTICLE II.

Respondent admits all the matters alleged and propounded by Article VI of the libel, save and except that this respondent denies that it has any

knowledge or information sufficient to or upon which to base the belief that the pilot of the "Ocklahama" while the steamer "Thode Fagelund" was beyond and over the dredge "Chinook" showed to the "Ocklahama" her green side light, and save and except that his respondent denies that it has any knowledge or information sufficient to or upon which to base the belief that when the "Thode Fagelund" came into the clear from behind the stern of the steamer "Chinook" and blew two whistles, the only side light of the "Ocklahama" and tow visible to the "Thode Fagelund" was the red light and as to said matters this respondent prays that the libelants be required to make proof thereof.

ARTICLE III.

This respondent alleges that it has no knowledge or information sufficient to or upon which to base the belief that the "Thode Fagelund" was negligent in blowing two whistles or attempting to cross the bow of the "Ocklahama" and tow when the red light of the "Ocklahama" was showing to the "Thode Fagelund" and the green light of the "Thode Fagelund" was showing to the "Ocklahama," and it therefore prays that libelants be required to make proof of said allegation, and this respondent further alleges that it has no knowledge or information sufficient to form the belief that the "Thode Fagelund" reversed her engines full speed astern shortly before the collision or that the "Thode Fagelund" was negligent in that she did not blow three

whistles to indicate that she was thus backing, and this respondent therefore denies said matters propounded in Article IX of the libel and prays that libelants be required to make proof thereof, and, except as herein denied, this respondent admits all the allegations of Article IX of the libel.

ARTICLE IV.

This respondent admits all the allegations and matters propounded in Article X of the libel.

ARTICLE V.

This respondent admits that a libel has been filed in this Court in admiralty in cause No. 6111, as alleged in Article XI of the libel, and that in said libel filed in this Court matters are propounded as set forth in Article XI of the libel in this cause, but this respondent denies that the several matters propounded in the libel filed by Wilhelm Wilhelmsen in case No. 6111 are true as therein alleged, and prays that the said Wilhelm Wilhelmsen and the libelants be required to make proof of said matters so propounded and alleged.

ARTICLE VI.

This respondent denies that if the matters propounded in the libel filed in cause No. 6111 filed in this Court by Wilhelm Wilhelmsen be true, as therein alleged, the fault for the collision complained of will lie with this respondent or with the tug boat "Ocklahama," or that the libelants will be entitled to recover their damages from this respondent, and denies that the collision was caused

by the fault of the "Ocklahama" or that the "Ocklahama" was negligently operated or that the "Ocklahama" was left in charge of an inexperienced pilot or that this respondent was at fault in that the master of the "Ocklahama" was in his bunk while navigating a narrow passage where ships were liable to be met, and denies that the "Ocklahama" and her tow approached said passage at full speed and that therein this respondent was at fault; and denies that the pilot of the "Ocklahama," upon receiving the first signal from the "Thode Fagelund" was negligent in not answering said first signal, and denies that the "Ocklahama" was negligently navigated in that no signal was given that her engines had been put full speed astern; and this respondent denies that any of the matters alleged in the libel of said Wilhelm Wilhelmsen and therein complained of as negligence on the part of this respondent or its employes caused or contributed to the collision; and denies that any of the matters alleged in the libel in this cause and therein alleged to have been negligence on the part of this respondent caused or contributed to the collision complained of; and, except as herein denied, this respondent admits all the allegations of Article XII of the libel.

ARTICLE VII.

This respondent admits all of the allegations propounded in Article XIII of the libel.

ARTICLE VIII.

This respondent alleges that it has no knowledge or information sufficient to or upon which to base a belief as to any of the matters alleged and propounded by Article XIV of the libel, and it therefore denies the same and prays that the libelants be required to make proof thereof.

ARTICLE IX.

This respondent alleges that it has no knowledge or information sufficient to or upon which to base a belief as to the matters alleged and propounded by Article XV of the libel or any thereof, and it therefore denies the same and each thereof and prays that the libelants be required to make proof thereof.

ARTICLE X.

This respondent admits all of the allegations of Article XVI of the libel.

For a further answer to the libel, this respondent respectfully shows unto your honors :

ARTICLE I.

This respondent is a municipal corporation, duly created, organized and existing under and by virtue of a certain act of the Legislative Assembly of the State of Oregon, entitled "An act to establish and incorporate 'The Port of Portland,' and to provide for the improvement of the Willamette and Columbia Rivers in said port and between said port and the sea," filed in the office of the Secretary of State February 18, 1891, and under and by virtue of

sundry amendments of said act filed in the office of the Secretary of State respectively February 10, 1893, February 18, 1899, March 1, 1901, February 23, 1903, and February 26, 1903, and under and by virtue of an amendment to the said act of the Legislative Assembly proposed by initiative petition in 1908 and duly adopted by the legal voters within the corporate limits of the Port of Portland at an election held on the day of June, 1908, and under and by virtue of said act and the amendments thereof, and particularly under and by virtue of the said amendment of June, 1908, The Port of Portland is authorized and empowered, among other things:

* * * "to purchase, lease, control and operate steam tug-boats and steam and sail pilot boats upon such rivers and upon the Columbia bar pilotage grounds, and to collect charges from vessels employing such tugs so operated and for pilotage services rendered by employes of said The Port of Portland, and said The Port of Portland shall have the right to claim and collect salvage for services rendered to vessels in distress in the same manner as a natural person. The charges for towage and pilotage shall be fixed by the Board of Commissioners of The Port of Portland and shall be public and published to the world. The charges for towage of sailing vessels shall include the services of such pilots as may be supplied by The Port of Portland. The charges for pilots supplied by The Port of Portland to steam vessels shall be

fixed by its Board of Commissioners, but shall in no respect exceed the charges fixed by the State of Oregon for pilots upon the bar pilotage grounds and upon the river pilotage grounds upon the Columbia and Willamette Rivers."

ARTICLE II.

Section 3 of the said amendment of June, 1908, provides:

"If a vessel or cargo, while being towed by a vessel owned or operated by The Port of Portland, or while under the charge of a pilot employe of The Port of Portland, is injured or lost by reason of the fault of such tug, or the negligence or incompetence of such pilot, The Port of Portland shall not be liable for any loss or injury thereof in excess of ten thousand dollars."

ARTICLE III.

On the 23rd day of August, 1913, and at all times since said date, and for a long time prior to said date, one A. L. Pease, Jr., was a pilot duly licensed in pursuance with the acts of Congress of the United States of America and the pilot rules adopted by the Department of Commerce and Labor of the United States, and, by his license, was authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds and classes on the Willamette and Columbia Rivers, and in particular on the river pilotage ground; that is to say from the lowermost dock or wharf at the Port of Astoria to the head of navigation on the

Columbia and Willamette Rivers and their tributaries, and also to tow steamers, sailing vessels and water craft of all kinds and classes in the limits aforesaid, and said A. L. Pease, Jr., at said times was duly licensed as a pilot under the laws of the State of Oregon and particularly the laws regulating pilotage on the Columbia River bar and on the Columbia and Willamette Rivers.

On or about the 23rd day of August, 1913, the master of the German bark "Thielbek" applied to the respondent to supply a tow boat and a pilot to tow the said bark from its anchorage at or near Young's Bay in the Port of Astoria to the City of Portland. Accordingly, and in discharge of its duty as a public corporation, this respondent, then being the owner of and operating the steamboat "Ocklahama," of which steamboat Isaac Turppa was master and the said A. L. Pease, Jr., was pilot, and which steamboat was then and there tight, staunch, strong and in good seaworthy condition and in all respects well officered, well manned, well equipped, well tackled and well supplied, sent the "Ocklahama" so officered, manned, equipped, tackled and supplied, on the 23rd day of August, 1913, to tow and pilot the said bark "Thielbek" from the point aforesaid where the said bark was at anchor to the City of Portland, and this respondent is informed and believes, and therefore alleges that the said steamboat "Ocklahama" so officered, manned, equipped, tackled and supplied and then and there carefully and prudently navigated arrived alongside

of the said bark at her anchorage at the hour of 10:30 p. m. on the 23rd day of August, 1913, but the time and tide not being suitable, lay alongside of the said bark "Thielbek" until the hour of about 3 a. m. of August 24, 1913, at which time the officers and crew of the steamboat "Ocklahama" lashed the steamboat "Ocklahama" to the bark "Thielbek" on the port quarter thereof in the ordinary and customary manner and, after having put out the lights according to the pilot rules of the Department of Commerce and Labor for inland waters; that is to say, a green light on the star-board side of the bark "Thielbek" and a red light on the port side of the steamboat "Ocklahama," both lights so screened that neither the green nor the red light would show across the bow of the bark "Thielbek"; and also white lights on the mast of the steamboat "Ocklahama," indicating that she had a tow; that the steamboat "Ocklahama" and the bark "Thielbek" so lashed together proceeded on their voyage as one vessel up the Columbia River. And this respondent is informed and believes and therefore alleges that at about 3:20 o'clock in the morning of August 24, 1913, as the steamboat "Ocklahama" and the "Thielbek" so lashed together proceeded on their voyage up the river and were passing Calendar Dock in Astoria Harbor, the said A. I. Pease, Jr., pilot upon the "Ocklahama," being then in charge and directing the navigation of the steamboat and her tow, saw the white lights of the dredge "Chinook"; that the dredge was at anchor

in the harbor at Astoria and swinging on the tide in such manner that the stern of said dredge was pointed toward the Astoria shore of the Columbia River and that soon thereafter the said pilot saw over the dredge "Chinook" the green light and two masthead lights of a steamer on the port bow of the "Ocklahama," but did not and could not see the steamer itself on account of the dredge "Chinook" being anchored on the port bow of the "Ocklahama" and between the steamer, the green light of which was seen, and the steamboat "Ocklahama"; that as soon as the said pilot saw the lights of the steamer over the dredge "Chinook" the steamboat "Ocklahama" was put under a slow bell and that very soon thereafter the said pilot heard two short blasts of the steam whistle blown from the steamer, the lights of which were seen beyond the dredge "Chinook" and which afterwards proved to be the steamer "Thode Fagelund," but that, by reason of the fact that the steamer "Thode Fagelund" was at that time beginning to round the stern of the dredge "Chinook" the said pilot, A. L. Pease, Jr., was unable to say with certainty whether a safe passage could be made to starboard and that therefore no answer was given to the said two whistles until the steamer "Thode Fagelund" should come out from behind the dredge "Chinook" and until the said pilot could determine whether the steamer "Thode Fagelund" could pass safely to starboard of the steamboat "Ocklahama" and the bark "Thielbek"; but that the said pilot at once put the helm

of the steamboat "Ocklahama" hard astarboard in such manner that the steamboat "Ocklahama" with her tow swung to port; that as soon as the "Thode Fagelund" came from behind the dredge "Chinook," and as soon as her position could be ascertained and was ascertained by the said pilot, A. L. Pease, Jr., the said pilot heard two short blasts of the steam whistle blown from the steamer "Thode Fagelund" and immediately answered the same by blowing two short blasts of the steam whistle from the steamboat "Ocklahama"; that said pilot having so ascertained the position of the steamer "Thode Fagelund" and her course, deemed that the said steamer "Thode Fagelund" could pass safely on the starboard side of the steamboat "Ocklahama" and her tow, the bark "Thielbek"; that at said time the "Ocklahama" was approaching the dredge "Chinook" and that said pilot, A. L. Pease, Jr., believing that there was danger, if the steamboat "Ocklahama" and her tow, the bark "Thielbek" should continue on the course upon which they were then moving, of their running upon and colliding with the said dredge "Chinook." Thereupon and for the purpose of avoiding a collision with the dredge "Chinook" and for this purpose only, the said pilot at once stopped the engines of the steamboat "Ocklahama" and backed full speed astern on a port helm; that at said time the pilot upon the "Ocklahama" believed that the said steamer "Thode Fagelund," pursuing the course which she was pursuing at the time she came from behind the dredge "Chinook"

and her position and course were ascertained by the said pilot, would have passed safely to starboard of the steamboat "Ocklahama" and of her tow the bark "Thielbek," but that the steamer "Thode Fagelund," instead of pursuing her course, or swinging to her port, began to swing to her starboard and continued to swing to her starboard until the red light of the steamer "Thode Fagelund" came in view of the "Ocklahama"; that the steamboat "Ocklahama" with her tow continued to back full speed astern for about three minutes so that most of the headway of the said steamboat and of the bark "Thielbek" had been stopped, and during said time the said steamboat "Ocklahama" with her said tow continued to swing to her port; that soon after the said signal had been given by the "Thode Fagelund" and answered by the "Ocklahama" and while the steamboat "Ocklahama" was backing full speed astern as aforesaid, the steamer "Thode Fagelund" dropped her port anchor and almost immediately thereafter the said steamer and the bark "Thielbek" came together head-on, tearing a large hole in the steamer in her port side a few feet from the bow and driving the anchor of the steamer through some plates and bending a number of other plates on both sides of the bow of the bark "Thielbek"; that at all of said times the said A. L. Pease, Jr., was a duly licensed, competent and experienced pilot and the several acts hereinbefore set forth, were done by the said pilot with intent to avoid and were well adapted to avoid a collision with the

steamer "Thode Fagelund," and to enable the said steamboat and the bark "Thielbek" to pass to starboard of the said steamer "Thode Fagelund"; that at all of said times, and particularly at and before the time of said collision the steamboat "Ocklahoma" was skillfully and prudently navigated and everything was done which could be done to avoid a collision with the steamer "Thode Fagelund."

ARTICLE IV.

On the 23d day of August, 1913, and at all times since said date, one M. Nolan was a pilot duly licensed as such under the acts of Congress of the United States of America and in pursuance to the pilot rules adopted by the Department of Commerce and Labor of the United States, and by his license was authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds and classes on the Columbia River and over the bar at the mouth of the Columbia River to the open seas, and, as such pilot, was in particular authorized and empowered to pilot steamers, steamboats, sailing vessels and water craft of all kinds over the bar pilotage grounds; that is to say, from the uppermost dock or wharf at the Port of Astoria or Knappton to the open seas at least ten miles beyond the uttermost buoy and was authorized and empowered to pilot steamers, such as the "Thode Fagelund" at and between the point on the Columbia River at which the said steamer "Thode Fagelund" came to anchor on the evening of said day, to the open seas, and the said M. Nolan at said times

was also duly licensed as a pilot under the laws of the State of Oregon, and was authorized and empowered, under said laws, to pilot steamers and all kinds of water craft on the Columbia River and over the bar at the mouth of said river to the open seas, and at said time and at all the times since that time and for a long time prior to said date, the said M. Nolan was employed by this respondent as a pilot on the Columbia River and over the bar at the mouth of said river and was at all said times, a competent and experienced pilot.

On or about the 23d day of August, 1913, the master of the steamer "Thode Fagelund" applied to the respondent to supply a pilot to pilot the said steamer "Thode Fagelund" over the bar pilotage ground, and particularly from the place where the "Thode Fagelund" was at anchor on the evening of the 23d day of August, 1913, down the Columbia River and over the bar at the mouth of said river to the open seas. Accordingly and in discharge of its duties as a public corporation, this respondent supplied as a pilot for the "Thode Fagelund," in pursuance of said request, the said M. Nolan, the said M. Nolan being at said time a pilot duly licensed, competent and experienced as aforesaid, and this respondent avers that it is informed and believes and therefore alleges that on the 24th day of August, 1913, at or about the hour of three o'clock in the morning the steamer "Thode Fagelund," having the said pilot M. Nolan in charge and directing her navigation, weighed anchor from a

point in the Columbia River off and opposite the dock of the Oregon-Washington Railroad and Navigation Company in Astoria harbor, and, under the direction of said M. Nolan as pilot started ahead under a slow bell and continued to proceed under said slow bell for about five minutes and then increased its speed to half speed ahead and continued to proceed at said half speed ahead until within about four hundred feet of and above the dredge "Chinook," a vessel about 450 feet in length the property of the United States at said time, anchored in the Columbia River at a point off and about opposite the middle of the said dock and lying directly across the channel of said river, leaving the channel so obscured that one on a vessel in the channel of said river above where the said dredge was anchored could not see a vessel coming up the channel of said river below the point where the said dredge was anchored; that when the "Thode Fagelund" had arrived on her course at a point in said channel about 400 feet from and above the said dredge "Chinook," which was then swinging to flood tide with her stern toward the Astoria side of the channel, the said Nolan, pilot as aforesaid, being then on watch and directing the navigation of the said steamer, saw a sailing vessel under tow almost head-on and about one-quarter of a point on the starboard bow of the said steamer, which sailing vessel was afterwards ascertained to be the bark "Thielbek" in tow of the steamboat "Ocklahama"; that when the said Nolan saw the said sailing vessel

under tow, he blew two short blasts of the steam whistle on the said steamer, signifying his intention to pass to starboard of the said sailing vessel under tow, he, the said Nolan, believing at said time that the said steamer "Thode Fagelund" could not pass safely to port of the said bark "Thielbek" and the steamboat "Ocklahama" and could pass safely to starboard of said bark "Thielbek" and the said steamboat "Ocklahama" by reason of the course which the said "Thode Fagelund" was then pursuing and by reason of the position of the said dredge "Chinook"; that no answer to the said two blasts was heard on the steamer "Thode Fagelund"; and that thereupon the said M. Nolan stopped the engines of the steamer "Thode Fagelund" and having then come out from behind the stern of the dredge "Chinook" and deeming it safe to pass to starboard of the said sailing vessel and of the said steamboat "Ocklahama" and not safe to pass to port of the said bark and the said steamboat, the said Nolan gave two short blasts of the steam whistle of the "Thode Fagelund" and immediately thereafter heard two short blasts in answer thereto given by the steamboat "Ocklahama"; that immediately after hearing the said two short blasts from the steamboat "Ocklahama," the steamer "Thode Fagelund" having then come from behind the dredge "Chinook," so that the position and the course of the bark "Thielbek" and of the steamboat "Ocklahama" could be more plainly seen, apprehended that there was imminent danger of a collision between

the said steamer "Thode Fagelund" and the said sailing vessel, and that thereupon the said Nolan at once reversed the engines of the "Thode Fagelund" and drove the same full speed astern in order to retard the headway of the steamer "Thode Fagelund," so that the bark "Thielbek" and the steamboat "Ocklahama" might have time to pass on their course out of danger of a collision with the said steamer "Thode Fagelund" and immediately gave four short blasts of the steam whistle of the "Thode Fagelund" and at once and to further retard the headway of the "Thode Fagelund," dropped the port anchor of the "Thode Fagelund" and again gave four short blasts of the steam whistle of the "Thode Fagelund"; that each of said acts on the part of the pilot Nolan was done promptly, for the purpose of and was adapted to avoid a collision between the bark "Thielbek" and the steamboat "Ocklahama" and the said steamer "Thode Fagelund"; but this respondent further alleges that it is informed and believes and therefore avers that the steamer "Thode Fagelund" was at said time not in a good seaworthy condition, or well officered, well manned, or well equipped or well tackled or carefully or prudently navigated in this, that the steering gear and the screw or propellor of the steamer "Thode Fagelund" were out of order or defective so that the said steamer "Thode Fagelund" did not steer well or answer her helm and so that said steamer, when her engines were driven full speed astern, did not steer with regularity or certainty, but some-

times swung to starboard when the steamer should have swung to port and sometimes swung to port when the steamer should have swung to starboard, and that these defects in said steamer were known to the master and officers thereof but were not known to the respondent or the said Nolan and could not have been discovered by the respondent or the said Nolan by the exercise of any care or diligence, and respondent avers that the accident or collision complained of and the damages thereby sustained were due to the fact that the steamer "Thode Fagelund" was not at said time in good seaworthy condition, or well officered, or well manned, or well equipped, or well tackled, and particularly to the fact that the steering gear and the screw or propellor of the said steamer "Thode Fagelund" were out of order and defective, and were not due to any negligence nor want of care on the part of this respondent or of its agents, servants or employes, and particularly were not due to any want of skill or care on the part of the said Nolan and were not due to any want of care or experience on the part of the said A. L. Pease, Jr., the pilot who at that time had charge of the navigation of the steamboat "Ocklahama" and her tow, the bark "Thielbek," and were not due to any want of prudence or care in the navigation of the steamboat "Ocklahama" and her tow, the bark "Thielbek."

For a further answer, this respondent humbly sheweth unto your honors :

ARTICLE I.

This respondent, as hereinbefore set forth, is a public or municipal corporation duly incorporated under the laws of the State of Oregon, with powers as hereinbefore in this answer set forth, and it is its duty, as such public corporation, among other things, to supply pilots to pilot steamers and water craft of all kinds from the high seas over the Columbia River bar and up the Columbia and Willamette Rivers to the City of Portland, and in discharge of its said duty as a public or municipal corporation, and not otherwise, this respondent, upon the request of the steamer "Thode Fagelund," as hereinbefore alleged, supplied M. Nolan as a pilot to pilot the steamer "Thode Fagelund" over the bar pilotage ground, as in this answer more particularly defined.

ARTICLE II.

At all the times set forth in the libel, the said M. Nolan had been examined by the Board of Supervising Inspectors of Hulls and Boilers for the First District of the United States, in pursuance of Rule 5 of the General Rules and Regulations prescribed by the Board of Supervising Inspectors, as amended January, 1912, and as further amended by the action of the Executive Committee of the Board of Supervising Inspectors on April 26, 1912, which Rules and Regulations are issued by the Department of Commerce and Labor of the United States, and are approved by the Secretary of Commerce and Labor of the United States, and at all said times

held a license duly issued to him by said board to act as master, mate or pilot on the waters of the Columbia and Willamette Rivers and on the bar at the mouth of the Columbia River to the open seas at least ten miles beyond the uttermost buoy, and was acting as such pilot at all the times the matters alleged in the libel are alleged to have occurred.

ARTICLE III.

Respondent further sheweth unto your honors that it is provided by the laws of the State of Oregon, among other things, as follows:

The pilot commissioners for the bar and river pilot grounds shall be appointed by the governor for the term of two years each.

The pilot commissioners shall organize as a board, to be known as "the board of pilot commissioners," by the election of a president and secretary, who shall hold their offices as follows: the president during his term as commissioner, and the secretary during the pleasure of the board.

The board has the power and it is its duty under this act to maintain a sufficient number of pilots upon the bar and river pilot ground to meet the demands of commerce, and to exercise a general supervision over the subject of pilotage upon said grounds, and to that end may do and provide as follows:

1. Examine and license pilots for said pilot grounds.

2. Hear and determine all complaints against any of said pilots.

3. Make and alter rules for the government of such pilots and the maintenance of an efficient pilot service on the pilot grounds afore-said not inconsistent with the laws of this state or the United States, and to enforce the same by any lawful and convenient means, including the suspension or removal of any such pilot and the imposition on him of a penalty of not to exceed \$250 for any violation thereof.

An application for a pilot's license must be made in writing to the board, stating briefly the applicant's name, place of birth, age and experience as a navigator and pilot, and if, upon careful examination, such applicant is found worthy and qualified as herein provided, he shall be licensed for the term of one year.

No person shall be licensed as a pilot unless he is an American citizen of the age of twenty-one years at least, of temperate habits, and good moral character; nor unless he possesses the requisite skill and experience as a navigator and pilot, together with practical knowledge of the currents, tides, soundings, bearings and distances of the several shoals, rocks, bars, points of landings, lights and fog signals of or pertaining to the navigation of the pilot ground for which he applies for a license to act as pilot.

Before receiving his license, a pilot must deliver to the secretary an official undertaking,

in the sum of \$5,000.00, signed by himself and two sureties, and approved by the president of the board, which undertaking shall be substantially in the following form: "Whereas, A. B. on, 19 . . . , was duly licensed as a pilot for the bar pilot ground (or the river pilot ground, as the case may be), he, the said A. B. for himself, and C. D. and E. F. as his sureties, do hereby undertake that if the said A. B. shall fail or neglect to faithfully and diligently perform his duties as such pilot, then we or either of us will pay to the State of Oregon, for the use of whom it may concern, the amount of all damage or loss caused by such neglect or failure, not exceeding \$5,000.00."

A pilot license shall be issued in the name of the State of Oregon and contain a designation of the pilot ground for which it is intended, and the rates of pilotage allowed thereon. Said license must be signed by the president of the board and countersigned by the secretary.

If a vessel or her cargo which is under the charge of a pilot is injured or lost, by reason of the negligence or incompetency of such pilot, he and his sureties in his official undertaking are liable to the parties interested for the damage caused thereby.

A pilot licensed under this act is authorized to take charge of any seagoing vessel over one hundred tons of burden, not then in charge of such pilot, anywhere upon the pilot ground for

which he is licensed, and to navigate her upon and over the same, and demand and receive therefor the compensation allowed by law.

ARTICLE IV.

In pursuance of the laws of the State of Oregon above set forth, and prior to all the times mentioned in the libel, the said Nolan had made application for a pilot's license and had appeared before the pilot commissioners and had been carefully examined by said commissioners and found worthy and qualified and had been licensed by said pilot commissioners and was empowered thereby to pilot vessels over the bar pilot grounds as in this answer before defined, and was a pilot in good standing, experienced and competent.

ARTICLE V.

This respondent further sheweth unto your honors that, in pursuance of the powers granted it by law as in this answer more particularly set forth, it is a duty of this respondent to purchase, lease, control and operate steamtugs upon the Willamette and Columbia Rivers and upon the Columbia bar pilot ground, and to furnish such steamtugs, together with a competent and experienced pilot for towing and piloting vessels from the high seas over the Columbia bar pilot grounds and on the Columbia and Willamette Rivers between the City of Portland and the high seas and, in pursuance of its said duty and not otherwise, this respondent at the request of the master of the bark "Thielbek" on the

23d day of August, 1913, furnished the steamboat "Ocklahama" duly and fully officered, manned, equipped and supplied and in all respects suitable and fit to tow and pilot the bark "Thielbek" from the point where the bark "Thielbek" was anchored on the evening of the 23d day of August, 1913, up the Columbia and Willamette Rivers to the City of Portland; that A. L. Pease, Jr., was a pilot at said times and at all the times mentioned in the libel, upon the steamboat "Ocklahama" and had been duly licensed to act as such pilot after an examination by the Board of Local Supervising Inspectors of the United States for the First District under and in pursuance of Rule 5 of the General Rules and Regulations prescribed by the Board of Supervising Inspectors as amended January, 1912, and as further amended by action of Executive Committee of the Board of Supervising Inspectors on April 26, 1912, which General Rules and Regulations and the amendment thereof were approved by the Secretary of Commerce and Labor of the United States, and a license had been by said Board duly issued to him to act as master, mate or pilot on the waters of the Willamette and Columbia Rivers and at all the places mentioned in the libel, and was such pilot at the times the matters alleged in the libel are alleged to have occurred.

ARTICLE VI.

The said A. L. Pease, Jr., had also made application for a license to the pilot commissioners for the bar and river pilot ground as defined by the

statutes of the State of Oergon hereinbefore set forth, and had been duly examined by the said board and been found worthy and qualified, as provided by the laws of the State of Oregon, and a license had been issued to him as such pilot and as such pilot had power and authority and was competent and qualified to pilot steamboats and to direct the operation of steamboats in towing barks, ships and vessels of all kinds on the Willamette and Columbia Rivers and particularly at the places mentioned in the libel and was a pilot in good standing and experienced and competent.

ARTICLE VII.

By reason of the several matters above alleged, respondent avers that respondent is not liable for any of the matters set forth in the libel and therein complained of.

Wherefore this respondent prays that the libel be dismissed as to this respondent and that it have and recover of and from libelants its costs and disbursements, and this respondent will ever pray, etc.

TEAL, MINOR & WINFREE,

Proctors for Respondent, The Port of Portland.

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

S. M. Mears, being first duly sworn, deposes and says: that he is chairman of the Commissioners of The Port of Portland, respondent in the above entitled cause, and makes this affidavit for and on behalf of The Port of Portland; that he has read

the foregoing answer and the same is true of his own knowledge, except as to such matters as are therein alleged on information and belief, and as to such matters he believes the same to be true.

S. M. MEARS.

Subscribed and sworn to before me this 31st day of October, 1913.

A. B. WINFREE,

[Seal]

Notary Public for Oregon.

Service of the within Answer and receipt of a copy is hereby admitted this 30th day of October, 1913.

WOOD, MONTAGUE & HUNT,

Proctors for Libelants.

Filed October 31, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on the 17th day of December, 1913, there was duly filed in said Court, Exceptions of Libelant to Answer of The Port of Portland, in words and figures as follows, to wit:

EXCEPTIONS TO ANSWER OF PORT OF
PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owner of the German
bark "Thielbek,"

Libelant,

vs.

The Norwegian steamship "THODE FAGELUND,"
her engines, boilers, tackle, apparel and furni-

ture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

TO THE HONORABLE CHARLES E. WOLVERTON AND
THE HONORABLE ROBERT S. BEAN, JUDGES OF THE
ABOVE ENTITLED COURT, SITTING IN ADMIRALTY:

The libelant Knohr & Burchard, Nfl., owner of the German bark "Thielbek," excepts to Article II of the first affirmative answer and defense of the respondent, The Port of Portland, wherein is pleaded Section 3 of the amendment of June, 1908, to the charter of The Port of Portland, which is as follows:

"If a vessel or cargo, while being towed by a vessel owned or operated by The Port of Portland, or while under the charge of a pilot employe of The Port of Portland, is injured or lost by reason of the fault of such tug, or the negligence or incompetence of such pilot, The Port of Portland shall not be liable for any loss or injury thereof in excess of ten thousand dollars."

for the reason that the limitation of the liability of The Port of Portland attempted to be established by said amendment is contrary to the maritime law and public policy and void, and is an attempt to limit the jurisdiction of the courts of admiralty to award full relief to the owners of vessels damaged in collisions.

Libelant further excepts to the second affirmative defense of The Port of Portland wherein it is

pleaded, among other things, that The Port of Portland is organized as a municipal corporation of Oregon, authorized to engage in pilotage and towage on the Columbia and Willamette Rivers, and wherein it is also pleaded that the pilots employed by The Port of Portland were duly licensed men, and that The Port of Portland exercised due care in the selection and employment of said pilots and that therefore The Port of Portland is not liable for any acts or injuries arising from the negligence of its said pilots, and as ground for its exception libelant says that said second affirmative defense pleaded in said answer does not state facts sufficient to constitute a defense to the libel herein.

Wherefore, the libelant prays the judgment of your honors accordingly that said Article II of the first affirmative defense in said answer is irrelevant and immaterial and should be stricken from the answer, and that the said second affirmative defense in said answer is insufficient and should likewise be stricken out.

WOOD, MONTAGUE & HUNT,
Proctors for Libelant.

Due service of the within exceptions by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, December 16, 1913.

WIRT MINOR,
Proctor for Port of Portland.

Filed December 17, 1913. A. M. Cannon, Clerk.

And afterwards, to wit, on Monday, the 23d day of February, 1914, the same being the 94th judicial day of the Regular November Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER SUSTAINING EXCEPTIONS.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD,

vs.

THE "THODE FAGELUND."

This cause was heard upon the exceptions to the answer of the respondent, The Port of Portland, and was argued by Mr. C. E. S. Wood and Mr. Erskine Wood, of proctors for the libelant, and by Mr. W. C. Bristol, of proctors for the claimant of the "Thode Fagelund," and by Mr. Wirt Minor, of proctors for the respondent, The Port of Portland; on consideration whereof, it is ORDERED AND ADJUDGED that said exceptions be and the same are hereby sustained.

And afterwards, to wit, on the 15th day of December, 1914, there was duly filed in said Court, Objections and Exceptions of Claimant to Form of Suggested Decree, in words and figures as follows, to wit:

OBJECTIONS TO FORM OF DECREE.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

Comes now Wilhelm Wilhelmsen, and objecting and excepting to the opinions and considerations of the Court of November 16th and December 14th respectively delivered herein, for ground of exception and objection thereto and to the form of the decree applied for and proposed to be entered herein, the said Wilhelm Wilhelmsen objects and excepts as follows:

First. The court having held the primary liability of The Port of Portland through its pilot Nolan in the operation of the "Thode Fagelund" the cause of the collision, a decree or judgment against

the "Thode Fagelund" directing its satisfaction *in rem* before The Port of Portland, held by the court to be ultimately liable, has been called upon to pay and a reasonable effort exhausted to obtain satisfaction therefrom, is unjust, erroneous and inequitable against this respondent Wilhelm Wilhelmsen, and his said ship.

Second. That said decree is contrary to the practice and against the law as announced by this court in the case of Christensen vs. Portland & Asiatic Steamship Company and in Christensen vs. Weir (1913).

Third. And that said decree is against and contrary to the evidence.

Fourth. That said decree is erroneous and against law, and against the evidence in that it disregards any effort whatever or any failure of any effort whatever upon the part of those actors in the collision, knowing and informed of the alleged primary cause of said collision as attributed to Nolan and that said actors in said collision took no step to avoid the consequence of Nolan's alleged negligence, that is to say, in considering and holding for the entry of said decree the Court here errs in disregarding and refusing to find upon the evidence in accordance with the requests made of record by this respondent and his said ship.

Fifth. That said decree is erroneous in that in the cause wherein four cases were tried together

the libelants herein availed themselves of the evidence procured and obtained at the expense of this respondent and the Court makes no adjustment or division of the same.

Sixth. That said decree and action of the Court is erroneous and involved because it dismisses the libel of the "Thode Fagelund" and this respondent, her owner, against the "Thielbek."

Seventh. That said decree is involved, unjust and inequitable, in that it does not direct from whom satisfaction shall first be obtained.

And so the said Wilhelm Wilhelmsen objects to the entry of the aforesaid decree and moves hereon and upon the record herein that as entered said decree be set aside and annulled.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss..

Due service of the within objections is hereby accepted in Multnomah County, Oregon, this 15th day of December, 1914, by receiving a copy thereof, duly certified to as such by W. C. Bristol.

ERSKINE WOOD,
Of Proctors for Knohr & Burchard.

ROGERS MACVEAGH,
Of Proctors for The Port of Portland.

Filed December 15, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on Tuesday, the 15th day of December, 1914, the same being the 38th judicial day of the Regular November, 1914, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

INTERLOCUTORY DECREE.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl.,

Libellant,

vs.

The Norwegian steamer "THODE FAGELUND,"
etc., and THE PORT OF PORTLAND,

Respondents.

WILHELM WILHELMSSEN,

Claimant.

This cause having been heard upon the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties, it is now, after due deliberation

ORDERED, ADJUDGED AND DECREED that the libellant recover from the steamer "Thode Fagelund," her engines, etc., and The Port of Portland, or either of them, all of its damages, with interest and costs, the amount thereof to be hereafter determined by this Court, and that the said steamer "Thode Fagelund" and her stipulator be

condemned therefor, and that upon the determination of the amount of said damages, with interest and costs, a final decree be entered herein in favor of libelant and against the said steamer and her stipulator, and against The Port of Portland, for the full amount of such damages, interest and costs, in accordance with the practice in admiralty; and it is further

ORDERED, ADJUDGED AND DECREED that in the event the claimant pays to the libelant the amount awarded the libelant by the final decree herein, or any part thereof, said claimant shall recover from The Port of Portland the amount so paid by said claimant to said libelant.

R. S. BEAN, Judge.

Dated December 15, 1914.

Due service of the within decree by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, December, 1914.

TEAL, MINOR & WINFREE,
Of Proctors for The Port of Portland.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

Filed December 15, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 14th day of June, 1915, there was duly filed in said Court an Opinion, in words and figures as follows, to wit:

OPINION.

*In the District Court of the United States for the
District of Oregon.*

THE "THIELBEK."

Monday, June 14, 1915, 10 a. m.

R. S. BEAN, District Judge (oral) :

In the matter of collision damages in the "Thielbek" case, there has been submitted on behalf of the "Thielbek" an itemized statement of damages claimed by it. To certain of these I note objections have been filed.

In the bill of \$80.00 for Veysey, for surveys, there is a charge of \$20.00 for a survey of the "Thielbek." Whether that survey was made in the libel brought by the "Fagelund" against the "Thielbek," or was in the proceedings for limiting liability is not very clear from the testimony. There is a reference to the testimony, or a statement of counsel, that it was a survey made, as I understand it, in the matter of limitation of liability. But in any event, it would not be a collision damage, although it might be an item of cost if it occurred in this particular case, so a deduction should be made in that item.

There is also a charge of \$465.00 for Anderson & Crowe for painting the ship's bottom. The vessel was ordered on the drydock by the surveyors in

order to ascertain whether she was injured below the water line. An examination disclosed no injury, but the paint had been rubbed off the bottom so it was necessary to repaint a part of the vessel. By the time it became dry enough for repainting, the anti-fouling paint had become destroyed so it was necessary to repaint the entire bottom of the vessel, and for that there is an item of \$465.00, which I think is a proper item of collision damage in the case at hand.

There is also a charge of \$11.00 for auto, livery and taxicab hire and boat hire used in taking the surveyors from Portland down to Linnton where the vessel was anchored, for the purpose of making the survey, and this I think is a proper item of damages.

In the bill of \$163.50, services and surveys of Ballin, there is a charge of \$20.00 for survey of the vessel, which is in the same condition as the \$20.00 charge on behalf of Veysey, and either arose out of the proceedings to limit liability or is an item of cost and not of collision damages.

There is also a charge of \$25.00 for the appraisalment of the "Fagelund," which of course is not an item of collision damages as against The Port of Portland, which is objecting thereto.

There is also a charge of \$12.50 for amount paid E. A. Mann for premium on a cost bond. The record is not clear as to whether this item arose out of the particular case now under consideration or one

of the other cases, but in any event it would be a proper item of cost and not of collision damages.

There is also a charge of \$90.15 for cablegrams. Copies of the cablegrams have been submitted, and so far as I can see they were not made necessary by the collision, but seem to be cablegrams between the agents of the vessel and the owners in Europe and their representatives in New York, concerning other matters and for information desired on matters, and ought not to be charged as an item of collision damages.

Objection is also made to item of \$250.00 to Kerr, Gifford & Company, agency fees. As I understand the record, this was for expenses made necessary by the collision, and is therefore a proper item of collision damage.

There is an item of \$115.90 for cash spent by Captain Bergmann. There is nothing in the record with reference to this except the bill, and he seems to have made an extra charge of two dollars a day during the time the vessel was in port, but whether that charge originated out of the collision or not does not appear from this record, and I do not think it should be allowed as a matter of collision damages.

That I believe disposes of all matters in controversy except the demurrage. After the vessel arrived in this port she was surveyed, specifications made for the repairs, and contract let to the Portland Boiler Works for \$7250.00, the repairs to be made to the "Thielbek" within a certain number of

days, I think twenty-two; the contract contained a stipulation that in case they were not completed within that time there should be a deduction of \$100.00 a day from the contract price for each day's delay. The work was not completed for thirteen days over and above the stipulated time, and the ship deducted from the contract price \$1300.00 on account of this delay. Now the question is therefore presented as to whether the ship is entitled to recover in this case the entire contract price, deducting the \$1300.00 for the demurrage or whether it should recover the actual amount paid the Boiler Works and demurrage for the entire number of days the ship was delayed. The ship would have been ready to take her cargo on September 5th but for the collision; she was not ready, as a matter of fact, until October 10th, or thirty-five days later, and therefore she was delayed thirty-five days. As I said, the question is whether she shall be entitled to demurrage for thirty-five days at the charter rate, or whether the thirteen days shall be deducted. Now the evidence shows, as I understand it, that the repairs were in fact made within a reasonable time. There is room for argument as to whether the ship is not entitled to demurrage at the charter rates for these thirteen days, but since it fixed with the contractor the rate of demurrage for any delay due to the contractor, I think it but fair that it should be bound by that in this adjustment, and therefore the demurrage will be based upon the actual delay of

the ship less the thirteen days, which would be twenty-two days, at the charter rate.

I think that disposes of all the objections in this case.

Filed June 14, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 15th day of June, 1915, there was duly filed in said Court, Objections of Claimant to Form of Interlocutory Decree, in words and figures as follows, to wit:

**OBJECTIONS OF CLAIMANTS TO FORM OF
DECREE.**

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her engines, boilers, tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

Wilhelm Wilhelmsen having heretofore on the 16th day of December, 1914, in chambers, reserved to the then form of interlocutory decree the objection that the same should provide for any recovery that may be had against Wilhelmsen to be obtained

over against The Port of Portland, which question was reserved until the entry of final decree.

Wilhelm Wilhelmsen having heretofore upon the settlement of interlocutory order on December 16, 1914, objected to any requirement in said interlocutory order for a limit of time within which voluntary payments should be made upon any decree entered in favor of the "Thielbek."

Wilhelm Wilhelmsen having heretofore on December 16, 1914, at the time of the coming on of the interlocutory order, made the objection that in any other decree to be entered herein or in any decree against The Port of Portland, that in the event that the amount was not recovered from The Port of Portland that recovery should be had against Wilhelmsen by the terms of said decree.

Now, therefore, Wilhelm Wilhelmsen now presents his objections and objects and excepts to the entry of the proposed final decree as of date of the 14th day of June, 1915, a proposed copy of which was served yesterday upon proctor for Wilhelm Wilhelmsen, in the following particulars, to wit:

First. That said proposed final decree is contrary to the terms of the interlocutory order of December 16, 1914.

Second. That said proposed decree limits the right of Wilhelm Wilhelmsen in his recovery against The Port of Portland.

Third. Said decree is not in conformity with the previous ruling of the Court or the intention of its

opinions as expressed by it in chambers, for as much as recovery upon Wilhelmsen's part under said decree is made to depend upon what he pays to the libelant regardless of what may be enforced or recovered by final judgment in any court.

Fourth. That said decree in favor of "Thielbek," if it is proper to enter any such decree over the objection of this libelant and objector, to which entry this libelant always objects and excepts, is against the evidence and against the law.

Fifth. It is only proper to enter a decree for such amount as might be recoverable against the "Thode Fagelund" and Wilhelmsen after The Port of Portland has failed to pay or after recovery has failed against it, if at all.

Sixth. That it is not competent to limit the time in which or the days within which, as said proposed decree proceeds to do, when the stipulator may or shall respond.

Seventh. And to the form of said decree as proposed libelant objects generally that the same is against the law and against the evidence.

W. C. BRISTOL,

Proctor for Wilhelm Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within objections is hereby accepted in Multnomah County, Oregon, this 15th day of June, 1915, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for Wilhelm Wilhelmsen.

ERSKINE WOOD,

Proctor for "Thielbek."

ROGERS MACVEAGH,

Of Proctors for The Port of Portland.

ZERA SNOW,

Proctor for Grace & Co. and Powder Co.

Filed June 15, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 22d day of June, 1915, there was duly filed in said Court, Objections of Claimant to Form of Decree, in words and figures as follows, to wit:

OBJECTIONS OF CLAIMANT TO FORM OF
DECREE.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND,"
her engines, boilers, tackle, apparel and furni-

ture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

TO THE HONORABLE R. S. BEAN, JUDGE OF THE ABOVE
ENTITLED COURT:

Since the service of the first form of decree herein and the preferment of the objections of this respondent thereto, another form of decree has been served with a shorter time previous to the moving day to which this respondent likewise objects and excepts to its entry for the following reasons:

First. Said amended form of decree is incorrect and erroneous in that it only allows and limits recovery by Wilhelmsen against The Port of Portland in event Wilhelmsen pays, whereas the decision of the Court in the consolidated causes, when the subject matter of this collision was tried, determined liability in The Port of Portland and that Wilhelmsen had a right of recovery against said Port of Portland.

Second. That it is incompetent, incorrect and erroneous for said decree to limit Wilhelmsen's recovery against The Port of Portland upon the mere payment of moneys to the "Thielbek." Wilhelmsen is accorded in law and by the decision of the Court in the consolidated causes all of the rights which may accrue to him in any way or manner under the decision of the Circuit Court of Appeals of the Ninth Circuit in the Burley case.

Third. That said decree is against the usual course and practice of this court in this, to wit, that it has shortened the time usually allowed and by the course and practice always allowed in collision causes in this Court for the convenience of parties in the ordinary transaction of business, and especially when foreign parties are involved, whereas the present form of decree undertakes to shorten the time to four days within which the stipulators shall immediately respond, which is unreasonable and unjust and not in accordance with the course and practice in this Honorable Court.

Fourth. That said amended decree is erroneous and unjust in said last particular further, to wit, that it runs against the stipulators of Wilhelmsen in its provision of four days within which said decree is to be satisfied and does not likewise justly and equitably apply to The Port of Portland, the principal *tort feasor* in said cause, and in that the time to arrange *supersedeas* is not sufficient or adequate in view of the fact that Wilhelmsen, even if he desired to give a *supersedeas* bond, is a resident of Norway and well known and proved so to be and all of the European countries are in a state of war affecting the ready transmission of mails, intelligence and information, all of which things are well known to the libellant.

Fifth. That there is no warrant or authority in law and the equities are against any such consideration, to limit the time or to treat the respondent Wilhelmsen in any other way in this case than

respondents and claimants are ordinarily treated in admiralty cases generally, and especially is this so in view of the distressed condition now prevailing in Europe and the fact that the decree which the "Thielbek" is attempting to obtain is only a part of the cause that was tried before the Court renders it inequitable to give the "Thielbek" any more favorable considerations than should or ought to be given to all the parties to said cause that said proposed amended decree now does more favorably do for said "Thielbek."

And so said Wilhelmsen and his stipulators object.

W. C. BRISTOL,
Counsel for Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within objections is hereby accepted in Multnomah County, Oregon, this 22d day of June, 1915, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for Wilhelmsen.

ERSKINE WOOD,
Proctor for "Thielbek."

ROGERS MACVEAGH,
Of Proctors for Port of Portland.

ZERA SNOW,
Of Proctors for Grace & Co.

Filed June 22, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Thursday, the 24th day of June, 1915, the same being the 101st judicial day of the Regular March, 1915, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

FINAL DECREE.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl.,

Libelant,

vs.

The Norwegian steamer "THODE FAGELUND,"
etc., and THE PORT OF PORTLAND,

Respondents.

WILHELM WILHELMSSEN,

Claimant.

An interlocutory decree having been entered herein whereby, among other things, it was adjudged that the libelant recover from the steamer "Thode Fagelund," her engines, etc., and The Port of Portland, or either of them, all of its damages, with interest and costs, by reason of the matters and things set out in its libel herein, and that if the claimant should pay to the libelant the amount of said damages, with interest and costs, as finally determined, or any part thereof, the claimant should recover from The Port of Portland the

amount so paid by him, and the Court having now determined from the evidence and arguments and briefs of counsel that the amount of the libelant's said damages is \$12,805.26, with interest thereon at six per cent per annum from the 20th day of October, 1913, until paid; it is now

ORDERED, ADJUDGED AND DECREED that the libelant recover herein against the steamer "Thode Fagelund," her engines, etc., and The Port of Portland, or either of them, the said sum of \$12,805.26, with interest thereon from the 20th day of October, 1913, until paid, and costs taxed at \$239.49, and that the said steamer "Thode Fagelund" be condemned therefor, and that execution issue against The Port of Portland therefor; and it is further

ORDERED, ADJUDGED AND DECREED that if the claimant, Wilhelm Welhelmsen, pays to the libelant, on account of this decree, the amount awarded herein, with interest and costs, or any part thereof, the said claimant shall recover over from The Port of Portland the amount so paid by him to the libelant; and it is further

ORDERED, ADJUDGED AND DECREED that the claimant and the stipulator for costs and value on the part of said claimant, do forthwith cause the engagements of their stipulations to be performed, or do show cause within thirty days after the entry of this decree why execution should

not issue against their goods, chattels and lands to enforce satisfaction of this decree.

Dated this 24th day of June, 1915.

R. S. BEAN,
Judge.

Filed June 24, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 29th day of June, 1915, there was duly filed in said Court a Motion to Set Aside Decree, in words and figures as follows, to wit:

MOTION OF CLAIMANT TO SET ASIDE
DECREE.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, the owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

WILHELM WILHELMSSEN, Tunsberg, Norway,
and M. B. HANSEN, Master,

Claimants.

Comes now Wilhelm Wilhelmsen, claimant above named, and moves the Court to set aside the decree

entered on the 24th day of June, 1915, for the following reasons :

First. Said decree was improvidently granted and without a hearing to said Wilhelmsen upon his objections thereto in either its original or amended form.

Second. That no notice was given to Wilhelm Wilhelmsen or his proctor or any one representing him that said decree was to be or about to be signed on June 24, 1915.

Third. That the rules of this Court as universally concurred in by the members of this Court who comply with said rules requires that objections and exceptions be presented to this Court on regular motion day and that the purported decree of June 24, 1915, was not so submitted to the Court.

Fourth. Wilhelm Wilhelmsen has been denied and his proctor representing him has been denied a day in said Court on said matter.

Fifth. That without any notice whatever to Welhelm Wilhelmsen or his proctors, Wood, Montague & Hunt, without ever informing the proctor for Wilhelm Wilhelmsen or said Wilhelmsen that said decree had been entered, communicated to the surety by letter dated June 26th, 1915, addressed to American Surety Company of New York, stipulator for said Wilhelmsen, and made a written demand as follows :

"We enclose copy of a decree which Judge Bean made in the case of Knohr & Burchard,

Nfl., vs. the steamer 'Thode Fagelund' and The Port of Portland, in the District Court of the United States for this district. You will notice this decree is dated the 24th day of June, 1915, and awards Knohr & Burchard \$12,805.26, with interest from the 20th day of October, 1913, and costs, and gives Wilhelm Wilhelmsen's stipulator thirty days within which to pay the decree. You are the stipulator and we therefore notify you of this decree and we look to you for payment.

Enc

Yours very truly,

EW:C (Sgd) WOOD, MONTAGUE & HUNT.

Sixth. That said Wilhelmsen did not learn nor his proctor did not learn or know of the entry of said decree until appearing upon Monday, June 28th, the regular calendar motion day in said Court, there and then to hear his objections previously filed to said proposed decree, when told by the clerk that the same had previously been signed and entered and so said Wilhelmsen charges that said decree was improvidently entered for the causes and reasons above stated.

Seventh. That said decree of June 24, 1915, while against the law and the evidence and erroneous and against admiralty and equity in such cases, is inequitable, unjust and improvident in this, to wit: That there has already been allowed to The Port of Portland in cause No. 6111, to Grace & Co. in cause No. 6129, to DuPont & Co. in cause

No. 6130 to and until the 29th day of September, 1915, to hear and determine the whole of said cause of collision, part of which is separately determined in said decree of June 24, 1915, and in order, therefore, for Wilhelm Wilhelmsen and his stipulator to protect themselves said decree of June 24, 1915, inequitably and unjustly forces Wilhelm Wilhelmsen and his stipulator either to pay said decree and thereby forfeit or affect his right of appeal thereto or print two records and prosecute as it were two appeals upon the same matter in the Circuit Court of Appeals for the Ninth Circuit.

Eighth. That said decree of June 24, 1915, is furthermore inequitable, unjust and against the law and the practice of this Court, in this, to wit: The Port of Portland is by the decision of the Court in the consolidated causes, to wit, Nos. 6111 and 6116, held to be the primary tort feisor and liable for all of the damage, and that now by the decree of June 24, 1915, the Court separates and allows to be prosecuted a separate and distinct decree for a part of said damage for which said Port of Portland is decreed in the consolidated cause to be liable conditional upon the payment by Wilhelm Wilhelmsen thereby when the Court has allowed to and until the 29th day of September, 1915, for a final hearing in that part of the same cause of collision with respect to damages that this claimant, Wilhelm Wilhelmsen may be entitled to recover affected by the same evidence, and the right to recover which depends upon a like state of facts as disclosed by

the evidence in the said "Thielbek" cause No. 6116, wherefrom and whereby it results that said Wilhelmsen is deprived of a substantial right and put to loss, cost, charge and expense without any corresponding legal remedy, as there is no right of recovery decreed to Wilhelmsen for what he may be out or injured during the period between such proceedings as he may be required to take upon said decree of June 24, 1915, in cause No. 6116 and up to the time the whole of said cause of collision is determined on September 29, 1915, in cause No. 6111.

Ninth. That The Port of Portland has contended in said consolidated cause, and so far as this client is informed and believes undertakes to contend in both causes that its liability is erroneously adjudicated, and to require Wilhelm Wilhelmsen to pay damages to the "Thielbek" before all of the matters and things relative to the whole of said collision cause are finally determined is inequitable and unjust and all proceedings under said decree of June 24, 1915, should be stayed until on and after September 29, 1915, so that one record, one set of proceedings and one set of apostles would present the whole matter without subjecting any of the parties to unnecessary and involved expense and proceeding.

Tenth. That under the practice of the Circuit Court of Appeals for the Ninth Circuit, the record and apostles have to be presented and filed in that

Court at a time earlier than the hearing set for September 29, 1915, so that whatever proceedings were held upon that date could not be included in said record and additional or other records would have to be printed, all to the manifest injury and loss of this claimant.

And so the said decree of June 24, 1915, is improvident, inequitable and unjust and should be set aside.

WILHELM WILHELMSSEN,

By his Proctor, W. C. Bristol.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

I, F. E. Grigsby, being first duly sworn, depose and say that I served the within motion by leaving a copy thereof duly certified by W. C. Bristol at the office of Erskine Wood, Wood, Montague & Hunt, proctors for Knohr & Burchard, owners of the "Thielbek," between the hours of four and five in the afternoon of the 29th day of June, 1915, it being stated that Mr. Erskine Wood was out of the city and that no one had authority to accept service in his absence.

F. E. GRIGSBY.

Subscribed and sworn to before me this 29th of June, 1915.

G. H. MARSH,
Clerk U. S. District Court.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within motion is hereby accepted in Multnomah County, Oregon, this 29th day of June, 1915, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for Wilhelm Wilhelmsen.

ROGERS MACVEAGH,

Of Proctors for Port of Portland.

Filed June 29, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 3rd day of July, 1915, there was duly filed in said Court a Notice of Appeal, in words and figures as follows, to wit:

NOTICE OF PORT OF PORTLAND OF APPEAL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl.,

Libelants,

vs.

The Norwegian steamer "THODE FAGELUND,"
etc., and THE PORT OF PORTLAND,

Respondents.

WILHELM WILHELMSSEN,

Claimant.

To KNOHR & BURCHARD, Nfl., libelants, and to
MESSRS. WOOD, MONTAGUE & HUNT, their pro-
ctors; to WILHELM WILHELMSSEN, claimant of the
Norwegian steamer "Thode Fagelund," and to

WILLIAM C. BRISTOL, Esquire, proctor for said steamer and for said claimant; and to G. H. MARSH, Esquire, Clerk of the above entitled Court:

Please take notice that respondent, The Port of Portland above named, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the District Court of the United States for the District of Oregon in the above entitled cause, made and entered on the 24th day of June, 1915, which said decree orders that said libelant Knohr & Burchard, Nfl., have and recover against the said steamer "Thode Fagelund," her engines, etc., and The Port of Portland, or either of them, the sum of twelve thousand eight hundred five and 26/100 dollars (\$12,805.26), with interest thereon from the 20th day of October, 1913, until paid, and costs taxed at dollars (\$.....), that the said steamer "Thode Fagelund" be condemned therefor, that execution issue against The Port of Portland therefor, that if the said claimant, Wilhelm Wilhelmsen, pays to the said libelants, on account of said decree, the amount awarded therein, with interest and costs, or any part thereof, the said claimant shall recover over from The Port of Portland the amount so paid by him to the libelants, and that said claimant and the stipulator for costs and value on the part of the said claimant do forthwith cause the engagements of their stipulations to be performed, or do show cause within thirty days after the entry of said

decree why execution should not issue against their goods, chattels, and lands to enforce satisfaction of said decree.

Dated at Portland, Oregon, 3rd July, A. D. 1915.

TEAL, MINOR & WINFREE,

ROGERS MACVEAGH,

Proctors for Respondent,

The Port of Portland.

Sevice of the within Notice of Appeal and receipt of a copy is hereby admitted this day of July, 1915.

RICHARD W. MONTAGUE,

Of Proctors for Knohr & Burchard, Nfl., Libelants.

W. C. BRISTOL,

Proctor for "Thode Fagelund" and Wilhelm Wilhelmshemsen, Claimant.

SNOW & McCAMANT,

Of Proctors for W. R. Grace & Co., and E. I. DuPont De Nemours Powder Company.

Filed July 3, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 7th day of July, 1915, there was duly filed in said Court an Assignment of Errors on Appeal of The Port of Portland, in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS ON APPEAL OF
PORT OF PORTLAND.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl.,

Libelants,

vs.

The Norwegian steamer "THODE FAGELUND,"
etc., and THE PORT OF PORTLAND,

Respondents.

WILHELM WILHELMSSEN,

Claimant.

Comes now The Port of Portland, a municipal corporation, respondent and appellant in the above entitled cause, and assigns errors in the decision and decree of the District Court of the United States for the District of Oregon heretofore made and entered in said cause and in the rulings of said District Court as follows:

I.

The Court erred in allowing libelants' exceptions to Article II of The Port of Portland's first affirmative answer and defense, wherein it is alleged that the law under which The Port of Portland is organized provides that its liability for an injury

to a vessel, while being towed by one of its tugs or in charge of one of its pilots, due to the fault of the tug or the negligence or incompetence of the pilot, is limited to ten thousand dollars (\$10,000.00), under Lord's Oregon Laws, Sec. 6108.

II.

The Court erred in holding that the liability of The Port of Portland for an injury to a vessel while being towed by one of its tugs or in charge of one of its pilots is not limited to ten thousand dollars (\$10,000.00).

III.

The Court erred in allowing libelant's exceptions to The Port of Portland's second affirmative defense, wherein it is alleged, among other things, that The Port of Portland is organized as a municipal corporation of Oregon authorized to engage in pilotage and towage on the Columbia and Willamette Rivers, and wherein it is also alleged that the pilots employed by The Port of Portland were duly licensed men and that The Port of Portland exercised due care in the selection and employment of said pilots, and that therefore The Port of Portland is not liable for any acts or injuries arising from the negligence of its said pilots.

IV.

The Court erred in finding that the collision between the Norwegian steamer "Thode Fagelund" and the German bark "Thielbek" was caused by or due to or resulted in any way from the negligence

of the pilot M. Nolan on board the said "Thode Fagelund."

V.

The Court erred in finding that the said M. Nolan, a pilot in the employ of The Port of Portland, and at the time of said collision employed by the master of the said "Thode Fagelund" to pilot the said "Thode Fagelund" from her anchorage in Astoria harbor to the open sea, was negligent.

VI.

The Court erred in holding that The Port of Portland is liable for the alleged negligence of said pilot M. Nolan.

VII.

The Court erred in making in this cause an interlocutory decree whereby it was adjudged that the libelants recover from The Port of Portland all or any part of their damages, with interest and costs.

VIII.

The Court erred in making this cause an interlocutory decree whereby it was adjudged that in the event the claimant should pay to the libelants the amount awarded by the final decree herein to said libelants, with interest and costs as finally determined or any part thereof, said claimant should recover from The Port of Portland the amount so paid by said claimant to said libelants.

IX.

The Court erred in making in this cause a final decree whereby it was adjudged that the libelants recover herein against The Port of Portland the

sum of twelve thousand eight hundred five and 26/100 dollars (\$12,805.26) with interest thereon from the 20th day of October, 1913, until paid, and costs taxed at dollars (\$.....) or any sum whatever, and that execution issue against The Port of Portland therefor.

X.

The Court erred in making in this cause a final decree whereby it was adjudged that if the claimant Wilhelm Wilhelmsen pay to the libelants, on account of said decree, the amount awarded therein, with interest and costs, or any part thereof, the said claimant should recover from The Port of Portland the amount so paid by him to the said libelants.

TEAL, MINOR & WINFREE,
ROGERS MacVEAGH,

Proctors for Respondent,
The Port of Portland.

Service of the within Assignment of Errors and receipt of a copy is hereby admitted this 7th day of July, 1915.

ERSKINE WOOD,
Of Proctors for Knohr & Burchard, Nfl.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

SNOW & McCAMANT,
Proctors for W. R. Grace & Co., and E. I. DuPont
De Nemours Powder Co., Libelants.

Filed July 7, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 19th day of July, 1915, the same being the 13th judicial day of the regular July, 1915, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER DENYING MOTION TO SET ASIDE
DECREE—ORDER FIXING AMOUNT
OF BOND ON APPEAL.

*In the District Court of the United States for the
District of Oregon.*

No. 6116.

KNOHR & BURCHARD

vs.

The "THODE FAGELUND," *et al.*

July 19, 1915.

Now at his day comes the libelant by Mr. Erkin Wood, of proctors, and the claimant of the "Thode Fagelund" by Mr. William C. Bristol, of proctors, whereupon this cause comes on to be heard upon the motion of the said claimant to set aside the decree entered in this cause; and the Court having heard the arguments of proctors, and now being fully advised in the premises, it is ordered that said motion be and the same is hereby overruled; and on motion of said claimant it is further ordered that the amount of the supersedeas bond to be given in this cause on appeal be and the same is hereby fixed in the sum of \$500.00.

And afterwards, to wit, on the 21st day of July, 1915, there was duly filed in said Court a Notice of Claimant of Appeal, in words and figures as follows, to wit:

NOTICE OF CLAIMANT OF APPEAL.

In the District Court of the United States in and for the District of Oregon.

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

WILHELM WILHELMSEN, Tunsberg, Norway, and M. B. HANSEN,

Claimants.

TO MESSRS. WOOD, MONTAGUE & HUNT, proctors for Knohr & Burchard, to MESSRS. KNOHR & BURCHARD, Nfl., Hamburg, Germany, libelants, and to MR. ERSKINE WOOD, their advocate; to THE PORT OF PORTLAND and to MESSRS. TEAL, MINOR & WINFREE, its proctors, and WIRT MINOR, Esquire, its advocate:

You and each and every one of you are hereby notified that Wilhelm Wilhelmsen, in the above entitled cause, claimant, attempts to and does

hereby appeal from the final decree of the above entitled Court in the above entitled cause dated, rendered and given on the 24th day of June, 1915, by Honorable R. S. Bean, Judge of the above entitled Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated at Portland, Oregon, July 21, 1915.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, this 21st day of July, 1915, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for Wilhelm Wilhelmsen.

TEAL, MINOR & WINFREE,
Proctor for The Port of Portland.

ERSKINE WOOD,
Proctor for the "Thielbek."

SNOW & McCAMANT,
Proctor for W. R. Grace & Company
and DuPont Powder Co.

Filed July 21, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 22nd day of July, 1915, there was duly filed in said Court an Assignment of Errors of the Claimant on Appeal, in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS OF CLAIMANT.

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German b ark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND," her tackle, apparel and furniture; and THE PORT OF PORTLAND, a municipal corporation,

Respondents.

WILHELM WILHELMSSEN, Tunsberg, Norway,
and M. B. HANSEN,

Claimants.

Comes now Wilhelm Wilhelmsen and in support of his petition and notice of appeal and in the prosecution of his said appeal in the above entitled cause from the decree of the 24th of June, 1915, in the above entitled Court, assigns and alleges errors in the rulings, decision and decree of the said District Court in said cause as follows:

FIRST:

That the District Judge having found in his decision and findings of November 16, 1914, as follows:

"The pilot of the "Fagelund" promptly blew two blasts of his whistle and put his helm hard-astarboard (where it remained until the collision) but receiving no answer, stopped his engines and a few seconds later, estimated to be ten or twelve, repeated the signals which were promptly answered by the "Ocklahama," but as the "Ocklahama" did not appear to change her course the "Fagelund," within five or six seconds after the exchange of signals, ordered her engines full speed astern, causing her bow to swing to starboard, blew four blasts of her whistle and, after the engines had been backing for about a-minute-and-a-half, dropped her port anchor, and almost immediately she was struck on the port bow a few feet from the stem by the bow of the "Thielbek," which plowed into her some distance almost on a line fore and aft,"

it follows that all of the adjudication and decision forming the basis of said decree of June 24, 1915, is erroneous for that it is contrary to and against the evidence and facts thus found by the Court.

SECOND:

That the Court erred in finding upon the evidence that the steamship "Thode Fagelund" was alone at fault.

THIRD:

That the Court erred in finding that the steamship "Thode Fagelund" should have signaled for a

port passage, especially when the Court found it to be true that the close proximity to the dredge "Chinook" when the "Ocklahama" was sighted involved the necessity of the steamship "Thode Fagelung" going to port to clear the dredge, involving the difficulty of thereafter swinging to starboard against the tide.

FOURTH:

That the Court erred in finding that the signals given by the "Thode Fagelund" were unusual and clearly excused the pilot of the "Ocklahama."

FIFTH:

That the Court erred in finding and in deciding negligence on the part of the "Thode Fagelund" to stop and back.

SIXTH:

That the Court having found in his decision of November 16, 1914, "If the 'Ocklahama' had continued on the course she was pursuing at the time the signals were exchanged she would have passed at least three or four hundred feet south of the place of collision," it was against the evidence and the law for the Court to decide and determine that the "Thode Fagelund" was alone responsible for said collision.

SEVENTH:

That the Court erred in holding and deciding that the faults charged against the steamship "Ocklahama" were not sustained by the evidence.

EIGHTH:

That the Court erred in holding and deciding that the faults charged against the "Ocklahama" and established by the evidence did not contribute to the collision.

NINTH:

That the Court erred in holding and deciding that Archie Pease, the pilot of the "Ocklahama," was excused from answering the signals of the "Thode Fagelund" and that the failure of the "Ocklahama" to promptly answer the signals of the "Thode Fagelund" was not negligence.

TENTH:

That the Court erred in holding and deciding as follows:

"The collision was due entirely to the fact that the 'Fagelund' after asking for and receiving permission to cross the bow of the 'Ocklahama' failed to execute such movement, but on the contrary reversed her engines, and swung to her own starboard directly across the course she had assigned to the 'Ocklahama' a few seconds before,"

for that it is against the evidence and contradictory to and against the other facts found by the said Court in its opinion.

ELEVENTH:

That the finding and decision of the Court that the "Ocklahama" and Archie Pease, its pilot, were

in no wise negligent is against the evidence in the cause and against the law.

TWELFTH:

That the Court erred in holding and deciding that the sole cause of the collision was the navigation of the "Thode Fagelund" without any regard for the contributing acts of Archie Pease, the pilot of the tug boat "Ocklahama," and without any regard to the contributing acts of navigation of the said tug boat "Ocklahama" as shown by the evidence and the findings and decision of the Court are contrary to the evidence in regard thereto.

THIRTEENTH:

That the decree of June 24, 1915, against Wilhelm Wilhelmsen as owner of the steamship "Thode Fagelund" and as against the steamship "Thode Fagelund" directing satisfaction *in rem* before The Port of Portland, held by the Court to be the primary tort feisor *in personam* in said cause, had been called upon to pay and a reasonable effort exerted to obtain satisfaction from said Port of Portland, is erroneous and against the law and inequitable.

FOURTEENTH:

Said decree of June 24, 1915, and the whole thereof is contrary to the evidence and against the law in adjudicating against and not in favor of the "Thode Fagelund" and her owner.

FIFTEENTH:

Said decree is erroneous and against the law and against the evidence in that it disregards and takes no account whatever of the duty and liability upon the part of the "Ocklahama" and its pilot Archie Pease to act upon their knowledge and information of the things apparent and evident to be seen and observed by them in the conduct of the "Thode Fagelund" and in not determining said Archie Pease and said tug "Ocklahama" bound upon said knowledge and information to take each and every step that they might have taken to avoid the collision of August 24, 1913, between the "Thielbek" and the ship of appellant.

SIXTEENTH:

That the Court erred in disregarding the evidence and in refusing to decide and hold upon the evidence as requested by Wilhelm Wilhelmsen that notwithstanding Nolan's alleged negligence, Pease, as pilot of the "Ocklahama," and the "Ocklahama," as a tug boat operated by The Port of Portland, could both have so acted as to avoid the collision but did not do so.

SEVENTEENTH:

That the Court below rendered an unjust, inequitable and erroneous decision, wherein four causes were tried together upon evidence availed of by all of the parties, in denying to Wilhelm Wilhelmsen his costs and decreeing the same in favor of The Port of Portland and in failing to make any adjustment or division of the same.

EIGHTEENTH:

That the Court erred in entering the interlocutory decree of December 16, 1914, in this cause.

NINETEENTH:

That the Court erred in ruling and deciding in its opinion of the 15th of June, 1915, that as against Wilhelm Wilhelmsen and his ship, the "Thode Fagelund," the "Thielbek" was entitled to twenty-two (22) days' demurrage at the charter rate as damages incident to said collision.

TWENTIETH:

That the Court erred in holding and deciding that the sum of \$12,805.26 with interest thereon from the 20th day of October, 1913, was the amount of the damages that the "Thielbek" sustained in said collision, from any act or thing done by the "Thode Fagelund."

TWENTY-FIRST:

That said decree of June 24, 1915, limits the right of Wilhelm Wilhelmsen in his recovery against The Port of Portland in that it erroneously requires the said Wilhelm Wilhelmsen to pay the amount of said damages adjudged to the "Thielbek" before any recovery against The Port of Portland, although the Court in the main case held The Port of Portland primarily liable.

TWENTY-SECOND:

That the decree of June 24, 1915, is erroneous and against the law in that it denies Wilhelm Wilhelmsen his rights accorded by the statutes and

laws of the United States conserving and giving to him a right of appeal, which right by the decision of the Circuit Court of Appeals for the Ninth Circuit is denied if he should conform to said decree by the payment of the same, and said District Court had no right nor power to enter said decree in said form over the objections of said Wilhelm Wilhelmsen making the condition of payment precedent to the right to enforce his claim or claims against The Port of Portland.

TWENTY-THIRD:

That it is against the law to limit the time in which, or the days within which, as said decree of June 24, 1915, does do, when the stipulator may or shall respond, for that the law and the equities of admiralty and maritime jurisprudence do not admit of treating Wilhelm Wilhelmsen or his respondent the said ship "Thode Fagelund" in any other way in this case than respondents and claimants are ordinarily in admiralty treated, and especially is this the case in view of the distressed condition prevailing in Europe and the fact that the decree which the "Thielbek" has obtained as of date June 24, 1915, is only a part of the cause that was tried before the Court as shown by the opinion of November 16, 1914; and it is inequitable, unjust and against the law to give the "Thielbek" any more favorable consideration than should or ought to be given to any or all of the parties to said cause as the same was tried regardless of whether or not separate decrees were to be entered in separate causes

or whether the whole of the same was regarded as one cause, and for these reasons said decree is erroneous and should not stand.

TWENTY-FOURTH:

That the Court erred in refusing and failing to set aside said decree of June 24, 1915, on the motion of Wilhelm Wilhelmsen and for the causes and reasons in said motion stated.

TWENTY-FIFTH:

That the Court erred in entering a decree that the libelants should have and recover against the steamship "Thode Fagelund," her engines, etc., *in rem* the sum of \$12,805.26 with interest from the 20th of October, 1913, and costs, or in entering any decree at all in favor of said "Thielbek" or said libelants.

TWENTY-SIXTH:

Under Rule 3 of the Pilot Rules "when steam vessels are approaching each other and either vessel fails to understand the course or intention of the other from any cause" it was the duty of the "Ocklahama" to immediately signify and certainly not later than the second whistle of the "Thode Fagelund" to give the danger signal, and although the Court was so requested to find and although the rule so provides, said District Court refused so to find and passed its decree of June 24, 1915, upon its opinion of November 16, 1914, contrary to the law in such cases and relieved the "Ocklahama" and its pilot Pease from all consequences of said

disobedience of said rule or law, and for these reasons said decree is erroneous.

TWENTY-SEVENTH:

That in the answer to the twenty-first interrogatory the libelants Knohr & Burchard, in whose favor said decree of June 24, 1915, is made, as said answer was filed on October 23, 1913, say and admit:

"It would have been quite safe for the 'Thielbek' and 'Ocklahama' to have kept to their own starboard side of the channel if the 'Fagelund' had blown for a port passage and had kept to her own starboard side,"

which admission was called to the attention of the Court, but upon which admission of record the Court declined and refused to find and nevertheless passed its decree of June 24, 1915, contrary thereto.

TWENTY-EIGHTH:

That the Court failed and refused to find upon Article XVIII of the answer and the issues tendered thereby of this respondent to the libel of the libelants in said cause and so the said decree of June 24, 1915, is erroneous.

TWENTY-NINTH:

That said decree of June 24, 1915, is erroneous for that the Court undertakes to hold the "Thode Fagelund" responsible for not giving a signal that her engines were reversed, while the evidence shows the "Ocklahama" continued to approach apparently

head on to the "Thode Fagelund," although claiming in the evidence that her engines were going full speed astern without giving any indication of that fact to those having a right to rely upon similar acts upon the part of the "Ocklahama" charged as negligence and as contributing acts to the "Thode Fagelund," and the Court erroneously applies the law to the evidence in the giving of his said decree of June 24, 1915, by finding the one state of facts against the "Thode Fagelund," and failing to apply the law and find on like evidence the same state of facts and applying the law as against the "Ocklahama," reference being particularly had to Article XII of the answer of Wilhelm Wilhelmsen and the subdivisions of said Article (e) and (f).

THIRTIETH:

That said decree of June 24, 1915, and all of the action of the Court leading up to said decree in said cause is contrary to and in the face of the allegations of the libel of these libelants Knohr & Burchard, in whose favor said decree is given, in this, to wit: In lines 4 to 17, page 17 of the libel in cause No. 6116, Article XII, these libelants allege:

"Especially allege that the 'Ocklahama' was left in charge of a young and inexperienced pilot, and that her master was in his bunk while navigating a narrow passage where ships were likely to be met, and that therein The Port of Portland was at fault; that the 'Ocklahama' and tow approached said passage at full

speed, and that therein The Port of Portland was at fault; that the pilot of the 'Ocklahama,' upon receiving the first whistle from the 'Thode Fagelund,' put her helm to starboard and failed to answer said first whistle of the 'Thode Fagelund,' and in so doing was negligent, and therein The Port of Portland was at fault; that the 'Ocklahama' was negligently navigated in that no signal was given that her engines had been put full speed astern."

THIRTY-FIRST:

The evidence shows that there was ample time and spacious room and full opportunity for the "Ocklahama" to have entirely avoided the collision and to have been readily and easily managed and navigated with her tow to prevent the collision, but the Court erred in disregarding this evidence, and the Court erred in refusing to find and in not finding in conformity thereto and by finding and deciding contrary thereto.

THIRTY-SECOND:

That the tug "Ocklahama" and the ship "Thielbek" and those in charge of them both knew and were aware, as shown by the record, of the position, course and distance of the "Thode Fagelund" and had time within which to act upon such knowledge and the evidence shows they did not do so, but went further than they ought to have gone on the admitted declaration of Archie Pease, their pilot, but all of these things were disregarded by the Court

and the Court refused to find and did not find in conformity thereto, and the Court erred in so doing and by finding and deciding contrary thereto.

THIRTY-THIRD:

That the pleadings of libelants are against and do not support the decree of June 24, 1915, rendered herein.

WILHELM WILHELMSSEN,
By W. C. Bristol, His Proctor.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within Assignments of Error is hereby accepted in Multnomah County, Oregon, this 22d day of July, 1915, by receiving a copy thereof, duly certified to as such by W. C. Bristol, proctor for Wilhelm Wilhelmsen.

ERSKINE WOOD,
Proctor for "Thielbek."

ROGERS MACVEAGH,
Of Proctors for Port of Portland.

SNOW & McCAMANT,
Proctor for Grace & Co.

Filed July 22, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 13th day of February, 1916, there was duly filed in said Court a Stipulation as to Apostles on Appeal, in words and figures as follows, to wit:

STIPULATION AS TO APOSTLES ON APPEAL.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND,"
and THE PORT OF PORTLAND,

Respondents.

Stipulation between the proctors for Wilhelm Wilhelmsen, the claimant; Knohr & Burchard, Nfl., the libelant, and The Port of Portland, respondent in the above entitled cause as to the papers, proceedings and evidence which the apostles on the appeal of the said The Port of Portland to the United States Circuit Court of Appeals for the Ninth Circuit shall contain, entered into in pursuance of Section 3 of Rule 4 of Rules in Admiralty of said Circuit Court of Appeals.

It is hereby stipulated by and between W. C. Bristol, proctor for Wilhelm Wilhelmsen, the claimant; Wood, Montague & Hunt and Erskine Wood, proctors for the libelant Knohr & Burchard, Nfl.;

and Teal, Minor & Winfree and Wirt Minor, proctors for The Port of Portland, respondent in the above entitled cause, that the Apostles on the Appeal of The Port of Portland, respondent in this cause, shall contain:

(1) A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed, whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner or commissioners, and if so, the result of the proceedings and report therein; the date of the entry of the interlocutory and final decrees; and the date when the notice of appeal was filed.

(2) All the pleadings, with the exhibits annexed thereto.

(3) All the testimony and other proof adduced in this cause except depositions of Bernard Meier, Bert Yegg, and Ole Olaffsen, taken on behalf of libellant Wilhelm Wilhelmsen before A. W. Person; all the depositions taken before A. C. Bowman at Seattle, Washington; deposition of Capt. M. B.

Hansen, with exhibits thereto attached taken before A. W. Person April 16, 1914; testimony of witnesses L. Veysey, Allyn, Tomissen, Brauch, Capt. J. L. Smith, Stayton, and McNulty, taken in court by Miss Mary E. Bell; all of the exhibits attached to depositions of Captain Bergmann and others taken before Katherine Beck Irvine October 10, 1913; all other exhibits except the following, which shall be included: Libelant's (Wilhelmsen's) exhibits 1, 4, 5, 6, 7, 10 and 13, 11 and 12, 14, 15, 16 (same as libelant's exhibit No. 7, A. W. P.), Knohr & Burchard's exhibits Nos. 1, 5 and 7, The Port of Portland exhibits Nos. 1, 2, 5 and 6, and claimant's exhibit No. 2 (A. W. P.).

(4) The exceptions of the claimant Wilhelm Wilhelmsen to certain portions of the answer of The Port of Portland.

(5) The order of the District Court upon the exceptions filed on behalf of Wilhelm Wilhelmsen, claimant to certain portions of the answer of The Port of Portland.

(6) The exceptions of the libelant Knohr & Burchard, Nfl., to certain portions of the answer of The Port of Portland.

(7) The order of the District Court upon the exceptions of Knohr & Burchard, Nfl., to certain portions of the answer of The Port of Portland.

(8) The interlocutory decree entered in this cause and any and all other orders in the District Court of the United States for the District of Oregon, made in this cause, and all opinions of said

Court rendered in this cause, and all orders of said District Court made and entered in certain other causes, to wit:

"That certain cause in said Court entitled: Wilhelm Wilhelmsen, libelant, vs. The German bark 'Thielbek' and The Port of Portland, respondents, No. 6111.

"That certain cause in said Court entitled: W. R. Grace & Co., libelants, vs. The German bark 'Thielbek' and The Port of Portland, respondents, No. 6129.

"That certain cause in said court entitled: E. I. DuPont de Nemours Powder Company, libelant, vs. the German bark 'Thielbek' and The Port of Portland, respondents, No. 6130.

"All opinions of said District Court rendered in said causes and in any of said causes."

(9) The final decree in this cause and the notice of appeal in this cause.

(10) The assignments of error in this cause.

Dated at Portland, Oregon, this 14th day of February, 1916.

W. C. BRISTOL,

Proctor for Wilhelm Wilhelmsen.

WOOD, MONTAGUE & HUNT,

ERSKINE WOOD,

Proctors for Knohr & Burchard, Nfl.

TEAL, MINOR & WINFREE,

Proctors for The Port of Portland.

Filed February 15, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 21st day of February, 1916, there was duly filed in said Court, an Additional Assignment of Errors, of the claimant, in words and figures as follows, to wit:

CLAIMANT'S ADDITIONAL ASSIGNMENT OF
ERRORS.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY—No. 6116.

KNOHR & BURCHARD, Nfl., owners of the German bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND,"
her tackle, apparel and furniture; and THE
PORT OF PORTLAND, a municipal corporation,

Respondents.

WILHELM WILHELMSSEN, Tunsberg, Norway,
and M. B. HANSEN,

Claimants.

Comes now Wilhelm Wilhelmsen and in support of his petition and notice of appeal, and in the prosecution of his said appeal in the above entitled cause from the decree of the 24th of June, 1915, in the above entitled Court, assigns and alleges additional and further errors in the rulings, decision and decree of the said District Court in said cause as follows:

For that since the assignments of errors were filed herein the proctor for The Port of Portland

applied to and obtained from the Court on the 25th day of October, 1915, a pretended consolidation order of causes numbered 6111 and this cause numbered 6116 and 6129 and 6130 as and upon appeal; and,

For that on the 7th day of February, 1916, the above entitled Court gave its further order and decision, after the term had expired, wherein and whereby it denied to Wilhelm Wilhelmsen all costs on the basis of its former opinion of December 14, 1914, and wherein it allowed to Knohr & Burchard, libelants and claimants of the "Thielbek," additional costs, as well as expenses for surety bond, and wherein it denied the right of recovery to Wilhelm Wilhelmsen of costs against The Port of Portland; and,

Forasmuch as these proceedings have been had and these matters adjudicated in such manner after notice of appeal and assignments of errors by this appellant Wilhelm Wilhelmsen had been given to the United States Circuit of Appeals in and for the Ninth Circuit, the said Wilhelm Wilhelmsen, appellant, now assigns further and additional errors therein and thereabout as follows, to wit:

Thirty-fourth. That the said Court erred in making the order of October 25, 1915, for that it had no power or jurisdiction to make said order, as said cause 6111 was then on appeal in the Circuit Court of Appeals in and for the Ninth Circuit, and the term at which said cause had been tried had passed.

Thirty-fifth. That the Court erred in consolidating causes 6111, 6116, 6129, and 6130 on appeal, as it had no power so to do.

Thirty-sixth. That the Court erred in its judgment and decree in allowing Knohr & Burchard, libelants for and claimants of the "Thielbek," to obtain costs or any judgment, order and decree in their favor in cause 6111, while at the same time denying costs recoverable by this appellant Wilhelm Wilhelmsen against The Port of Portland.

Thirty-seventh. That the Court erred in giving a judgment, order or decree in favor of Knohr & Burchard for any amount in costs after said Court had originally entered a decree in favor of the "Thielbek" and its owners and claimants Knohr & Burchard in cause 6111, from which this appellant had theretofore appealed.

Thirty-eighth. That there was an abuse of the discretion in withholding costs from Wilhelm Wilhelmsen and denying the recovery thereof against The Port of Portland on the grounds of the opinion of December 14, 1914, or any other grounds, for that The Port of Portland had failed in and had abandoned its defense of faulty steering gear and defective propellor, upon and in regard to which Wilhelm Wilhelmsen was compelled to take testimony, for the expense of taking which said Court denied Wilhelm Wilhelmsen his costs.

Thirty-ninth. That there was an abuse of discretion in refusing Wilhelm Wilhelmsen the costs of

the record in the lower Court for which he paid the official stenographer four hundred and seventy-seven dollars (\$477.00), and which record, so paid for by Wilhelmsen's money, is being used by all of the other parties to this appeal, and in refusing to allow Wilhelmsen his proportion therefor and his right to recover the same against The Port of Portland.

And the said Wilhelm Wilhelmsen makes these additional further assignments of errors, being forced thereunto by the state of the record, but reserving his right in said causes on appeal, if any there be, and reserving the right to move to dismiss or affirm in cause 6111, wherein The Port of Portland has attempted to appeal.

W. C. BRISTOL,
Proctor for Wilhelm Wilhelmsen.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

I, F. E. Grigsby, being first duly sworn, depose and say that I am over the age of 21 years; that I personally served the within additional assignments of error upon Erskine Wood, proctor for the libelants, by leaving at his office between the hours of 9 a. m. and 5 p. m., on the 21st day of February, 1916, a copy thereof duly certified by W. C. Bristol, proctor for Wilhelm Wilhelmsen, in the above

entitled cause, and that the foregoing is true as I verily believe.

F. E. GRIGSBY.

Subscribed and sworn to before me this 21st day of February, 1916.

G. H. MARSH, Clerk,

United States District Court, District of Oregon.

DISTRICT OF OREGON, }
County of Multnomah. } ss.

Due service of the within additional assignments of error is hereby accepted in Multnomah County, Oregon, this 21st day of February, 1916, by receiving a copy thereof, duly certified to as such by W. C. Bristol, Attorney for Wilhelm Wilhelmsen.

ROGERS MACVEAGH,
Of Attorneys for The Port of Portland.

Filed February 21, 1916. G. H. Marsh, Clerk.

And, to wit, on the 16th day of October, 1913, there was duly filed in said Court, in cause No. 6129, W. R. Grace & Company vs. The Bark "Thielbek" and The Port of Portland, a Motion to Dismiss Libel, in words and figures as follows, to wit:

MOTION TO DISMISS LIBEL, CAUSE NO. 6129,
W. R. GRACE & CO VS. THE "THIELBEK"
ET AL., ANNEXED TO THIS TRANSCRIPT
AND MADE A PART THEREOF PURSUANT
TO STIPULATION.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.

W. R. GRACE & COMPANY,

Libelant,

vs.

The German bark "THIELBEK," her boats, tackle, apparel, furniture, and appurtenances; and THE PORT OF PORTLAND, owner of the steam tug "Ocklahama,"

Respondents.

Now comes the "Thielbek," by Wood, Montague & Hunt, her proctors, and for this purpose only, and excepts to the libel filed herein, and moves that the libel be dismissed and the vessel discharged from arrest, and by way of exceptive allegations, alleges as follows:

I.

Heretofore, to wit, the 30th day of August, 1913, a libel was filed against this same bark "Thielbek,"

by Wilhelm Wilhelmen, as managing owner of the steel steamship "Thode Fagelund," which is No. 6111 of this Court, and is now pending upon libel and answer. That by said libel the same facts are alleged relating to the same collision as in the libel here pending in the above entitled cause, and among other things it is alleged in Article Fourteen of said libel that libelant does not know who are the cargo owners of the cargo in said vessel, the "Fagelund," but believes that W. R. Grace & Company of San Francisco are either the owners or consignees, but whether that be true or not, in order to place the ship in safety and prepare her for repairs, it was found necessary to discharge all of her deckload of piling at Astoria and to take out of her after-hold the twenty-five tons of dynamite, and to discharge the larger portion if not all of her deckload of lumber, and that said ship was towed to the Port of Portland, Oregon, where that could be accomplished; all of which was occasioned by the striking of said steamship "Fagelund" by the "Thielbek" as afore-said, and amounts to the sum of twenty-five thousand dollars.

II.

That this is the same damage as sued for by the libel here pending, and the "Fagelund," her master or owner, had full authority to sue and recover whatever damage is sustained or expenses incurred by the cargo.

III.

That after the filing of the said libel last aforesaid, to wit, that of the "Fagelund" against the "Thielbek," the "Thielbek" in her then damaged condition by order of the Court was appraised by three competent surveyors, who appraised her value in her then damaged condition at thirty thousand dollars, which report was adopted and approved by the Court, and the said "Thielbek" was ordered released upon giving a stipulation in the sum of thirty thousand dollars; and thereafter and prior to the commencement of this suit and prior to the seizure of the "Thielbek" in this proceeding, the "Thielbek" filed such stipulation approved by the Court and has been released.

IV.

That the "Thielbek" is advised by counsel that under the statute of limitation of liability of ship-owners in the United States, she is entitled to limit all liability to the value of the wreck after the collision, by surrendering such value into court, which she has done, and in substance and effect and in equity the stipulation filed by order of the Court upon the appraised value of the wreck of the "Thielbek" ought to be taken as a limitation of the owners of the "Thielbek," and the "Thielbek" intends to file immediately a formal petition for such limitation of liability.

Wherefore, the "Thielbek" prays that the libel herein filed be dismissed and that she be discharged from arrest and that all proceedings against her be

stayed, to await the determination of the said petition to limit liability.

C. E. S. WOOD,
RICHARD W. MONTAGUE,
ISAAC D. HUNT,
ERSKINE WOOD,

Proctors for "Thielbek."

UNITED STATES OF AMERICA, }
District of Oregon. } ss.

A. Bergmann, being duly sworn, says that he is the master of the German bark "Thielbek"; that he has read the foregoing exceptive allegations, and the same are true as he verily believes.

A. BERGMANN.

Subscribed and sworn to before me this 15th day of October, 1913.

[Seal] ERSKINE WOOD,
Notary Public for Oregon.

Due service of the within exceptions by certified copy as prescribed by law is hereby admitted at Portland, Oregon, October 16, 1913.

SNOW & McCAMANT,
Proctors for Libelant.

Filed October 16, 1913. A. M. Cannon, Clerk.

And, to wit, on the 3d day of November, 1913, there was duly filed in said Court, an Opinion on Motion to Dismiss Libel in Cause No. 6129, W. R. Grace & Company vs. The "Thielbek" et al., in words and figures as follows, to wit:

OPINION ON MOTION TO DISMISS LIBEL,
CAUSE NO. 6129, W. R. GRACE & CO. VS.
THE "THIELBEK" ET AL., ANNEXED TO
AND MADE A PART OF THIS TRANSCRIPT
BY STIPULATION.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.

W. R. GRACE & COMPANY,

Libelant,

vs.

The German bark "THIELBEK" and THE PORT
OF PORTLAND,

Respondents.

E. I. DUPONT DE NEMOURS POWDER CO.,

Libelant,

vs.

The German bark "THIELBEK" and THE PORT
OF PORTLAND,

Respondents.

MEMORANDUM BY BEAN, District Judge.

The motions to dismiss the libels in the above entitled causes will be overruled on the following grounds:

1. The motions are not made by the claimant, owner or master of the "Thielbek," but in the name of the "Thielbek" itself.

2. The libel filed by the owner of the "Fagelund" is not on behalf of her cargo owners, and is not for damage to cargo, but for only such damages as the owners of the vessel may have suffered by the collision.

3. The parties have stipulated for the consolidation of these causes with other pending libels.

Filed November 3, 1913. A. M. Cannon, Clerk.

And, to wit, on the 24th day of November, 1913, there was duly filed in said Court, an Opinion on Exceptions to the Answer of The Port of Portland, Filed in Cause No. 6129, W. R. Grace & Co. vs. The "Thielbek" and The Port of Portland, in words and figures as follows, to wit:

OPINION ON EXCEPTIONS TO ANSWER OF
PORT OF PORTLAND, IN CAUSE NO. 6129,
W. R. GRACE & CO. VS. THE "THIELBEK"
ET AL., ANNEXED TO AND MADE A PART
OF THIS TRANSCRIPT BY STIPULATION.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.

GRACE & COMPANY

vs.

THE "THIELBEK" and PORT OF PORTLAND.
DUPONT POWDER COMPANY

vs.

THE "THIELBEK" and PORT OF PORTLAND.

MEMORANDUM BY BEAN, District Judge, ON EXCEPTIONS TO ANSWER OF PORT OF PORTLAND.

The exceptions raise the question whether the Port of Portland is liable for the negligence of a pilot employed by it, if it exercises due care in his selection. The Port of Portland is a municipal corporation organized under the laws of the state, and authorized and empowered, among other things, to establish and maintain an efficient towage and pilotage service on the Willamette and Columbia Rivers between the City of Portland and the open sea, and to that end may purchase, lease, control and operate steam tugboats and steam and sail pilot boats, and collect such charges for pilotage and towage as the Board of Commissioners of The Port of Portland may fix, not to exceed the charges provided by the State (L. O. L. Sec. 6106).

It is entitled to a lien upon a vessel for services due for pilotage and towage, and the master and owner of the vessel are also jointly and severally liable for such charges (Sec. 6107).

By Section 6108 it is made liable for an injury to a vessel while being towed by a vessel owned or operated by it or while under the charge of a pilot employed by it, when such injury is caused by reason of the fault of such tug or the negligence or incompetence of such pilot, not to exceed the sum of \$10,000.00

It seems, therefore, that the statute creating The Port of Portland and defining its duties and powers makes it liable to some extent for the negligence

and incompetence of a pilot employed by it when engaged in piloting a vessel. But independent of the statute, I think it is clearly liable under the decision of the Supreme Court in

Workman vs. New York City, 179 U. S. 552, and the decision of Judge Wolverton in

U. S. vs. Port of Portland, 147 Federal 865, and the Circuit Court of Appeals in

Port of Portland vs. U. S., 176 Federal 866.

In conducting a pilotage and towage business it is not exercising powers and duties imposed upon it as a mere agency of the state for public general purposes, but is a mere substitute for individual enterprises. It undertakes to supply to shipping the same accommodations that would be supplied by a private corporation or individual engaged in the same business. It charges and receives compensation therefor, and should, I take it, be held liable for the negligence or incompetence of its employes, the same as others engaged in the same occupation. Nor does the fact that it must employ pilots licensed by the state affect its liability any more than it would the liability of a private corporation engaging such pilots.

The exceptions are therefore allowed.

Filed November 24, 1913. A. M. Cannon, Clerk.

And, to wit, on the 3d day of November, 1913, there was duly filed in said Court, an Opinion, in Cause No. 6139, In the Matter of Knohr & Burchard, Nfl., Owners of the Bark "Thielbek," to Limit Liability, in words and figures as follows, to wit:

OPINION IN CAUSE No. 6139, IN THE MATTER OF THE PETITION OF KNOHR & BURCHARD, OWNERS OF THE BARK "THIELBEK," TO LIMIT LIABILITY, ANNEXED TO AND MADE A PART OF THIS TRANSCRIPT BY STIPULATION.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.

THE GERMAN BARK "THIELBEK,"

Knohr & Burchard, Nfl., Owners.

BEAN, District Judge.

On the night of August 24, 1913, a collision occurred in the harbor of Astoria between the German bark "Thielbek," in tow of the steamer "Ocklahama," a pilot boat belonging to The Port of Portland, and the Norwegian steamship "Thode Fagelund," which was on a voyage down stream with a cargo of lumber and dynamite. The "Thielbek" and the "Fagelund" were both damaged.

On August 30, 1913, Wilhelm Wilhelmsen, owner of the "Fagelund," filed a libel in this Court against the "Thielbek" *in rem* and The Port of Portland *in personam*, alleging that the collision was due to

the fault of the respondents, and praying damages in the sum of \$125,000, for cost of making necessary repairs to the "Fagelund," her loss of time, and cost and expense of discharging her cargo. The "Thielbek" was arrested, and on the same day Knorr & Burchard, Nfl., her owners, filed a claim therefor and entered into a stipulation in the sum of \$30,000, her value after the collision as appraised by commissioners appointed by the Court, for her release, and she was discharged accordingly.

On September 13th the owners of the "Thielbek" filed a libel against the "Fagelund" *in rem* and The Port of Portland *in personam* for damages alleged to have been caused to the "Thielbek" by the collision. The "Fagelund" was arrested and released on stipulation.

On October 9th W. R. Grace & Company libeled the "Thielbek" *in rem* and The Port of Portland *in personam*, alleging that it was the owner of part of the cargo of the "Fagelund" and that such cargo was damaged, and that it had incurred expenses in discharging, storing and reloading same, and had become liable for general average expenses by reason of the negligence and wrongful navigation of the "Thielbek" and the "Ocklahama."

A similar libel was filed on October 14th by E. I. DuPont de Nemours Powder Company, owner of a part of the cargo of the "Fagelund," against the "Thielbek" and The Port of Portland. The "Thielbek" was arrested in each of these cases, and released on stipulation.

On October 14th a stipulation was entered into by the proctors for the respective parties in the several cases referred to, consolidating them for trial.

Thereafter, and on October 16th, Knorr & Burchard, Nfl., filed a petition in this Court, alleging that they are the owners of the "Thielbek"; that she was then within the jurisdiction of this Court; stating the circumstances of the collision, the movement and conduct of the several vessels concerned therein, and averring that the "Thielbek" was without fault, and that the collision occurred without the privity or knowledge of the petitioners. They also allege the libels of the "Thielbek" by Wilhelm Wilhelmsen, W. R. Grace & Company and the DuPant de Nemours Powder Company; that her value in her damaged condition after the collision was \$30,000, and that she was so appraised by competent appraisers appointed by this Court in the case brought by Wilhelmsen, for the purpose of determining the amount of the stipulation to obtain her discharge therein; that believing that the libel of Wilhelmsen represented all the claims probable to arise out of the collision, the petitioners gave a stipulation in such case, for the benefit of whom it may concern, in the sum of \$30,000, which was the full value of the vessel, and in all respects the same in terms, and is arrived at by the same procedure required by courts of admiralty in a case of liability of ship owners.

The prayer is for a decree discharging the petitioners from any liability for the collision, or if on final hearing they should be held liable that their liability should be limited to \$30,000, the value of the "Thielbek" after the collision; that an order be made that the stipulation heretofore given for the release of the vessel in the Wilhelmsen cause may stand as a stipulation in the proceeding to limit liability in lieu of a surrender of the vessel, and for an order staying the prosecution of any suits and particularly the libels mentioned in the petition, and consolidating the same for the purpose of trial; that notice may issue in accordance with the admiralty practice, citing all persons who have any claims against the "Thielbek" or the petitioners to appear at a time fixed by the Court and present their claims; and that notice of petition and citation to all parties be published as required by the admiralty rules; and for such other and further relief as may seem meet and equitable and in accordance with the practice in admiralty.

Thereafter, and on October 18th, on motion of the petitioners, commissioners were appointed to appraise the "Thielbek" in her damaged condition, and return same to the Court. This order was made without prejudice to the rights or legal position of any of the parties.

The DuPont de Nemours Powder Company, W. R. Grace & Company and Wilhelmsen now move to discharge the order appointing appraisers, on the

ground that it was improvidently made, for reasons substantially as follows:

1. Knorr & Burchard, Nfl., the petitioners, do not by their petition surrender or offer to surrender the "Thielbek" or to give a stipulation for her value.

2. That the "Thielbek" and the "Ocklahama" were in effect one vessel at the time of the collision, and the petitioners are required as a condition to an order limiting their liability to surrender or offer to surrender the "Ocklahama" or give a stipulation for her value.

3. The "Thielbek" was permitted by the petitioners to leave the jurisdiction of the Court after the appointment of the appraisers and before the appraisal was or could be made.

Of these questions in their order:

1. A proceeding to limit liability is in the nature of an equitable action in admiralty, the object of which is to prevent a multiplicity of suits and to limit the recovery, if any, against the owner of a vessel when the loss or damage was occasioned or incurred without his privity or knowledge, in the cases specified in the statute, to the amount or value of his interest in such vessel and her pending freight.

Sec. 4283 Revised Statutes;

Norwich Co. vs. Wright, 13 Wall. 104;

In re Morrison, 147 U. S. 14;

O. R. & N. Co. vs. Balfour, 90 Fed. 296.

No particular form of pleading is required to invoke the action of the Court in that behalf. It is

sufficient if the owner or owners file a libel or petition in the proper district, setting forth the facts and circumstances on which the limitation of liability is claimed and praying proper relief.

Admiralty Rule 34.

And this I think has been done in the present case. The fact that the petition contains no affirmative offer to surrender the vessel or give a stipulation for its value is a mere technical matter which does not go to the merits. The petitioners have by their petition submitted themselves to the jurisdiction of the Court, and it has ample power to require them to either surrender the vessel or give the necessary stipulation, or deny them all relief and dismiss their petition, as the justice of the cause may suggest.

In re Morrison, 147 U. S. 14.

2. The petitioners are not the owners of the "Ocklahama" and have no control over her. It is therefore impossible for them to surrender her as they might be required to do if they were the owners.

The Columbia, 73 Fed. 226;

The San Rafael, 141 Fed. 270.

Whether if an order should hereafter be passed limiting the petitioners' liability, such limitation should be based alone on the value of the "Thielbek" after the collision or should also include the value of the "Ocklahama," is a question not pertinent to the present inquiry, but can properly arise only when an application is made, if at all, for such an order.

3. The fact, if it is a fact, that the "Thielbek" was out of the jurisdiction of the Court at the time the appraisement was made by the commissioners, does not affect its jurisdiction to appoint such commissioners. At the time the commissioners were appointed the ship was lying at the Port of Portland and within the jurisdiction of the Court. If before the appraisement could have been made the petitioners allowed the vessel to depart, the result of which was that a fair and just appraisement could not be made, it may afford sufficient ground for the Court to refuse to approve such appraisement and order another appraisement or dismiss the petition.

In re Morrison, supra;

The Dimock, 52 Fed. 598;

but no reason for revoking the order appointing the commissioners. Moreover, the jurisdiction of the Court to entertain the petition to limit liability does not depend upon the physical presence of the vessel, but upon the fact that she had been libeled in this Court.

Admiralty Rule 57.

Nor was it necessary for the petitioners to surrender the ship or transfer her to a trustee in order to enable them to take advantage of the provision limiting their liability to her value. They can pay such value into Court or secure the same by stipulation for the benefit of interested parties.

Spencer on Collisions, Sec. 218;

The City of Norwich, 118 U. S. 468;

The Scotland, 105 U. S. 24;

In re Morrison, 147 U. S. 14.

The court has no authority to order the stipulation given in the *Wilhelmsen* case to stand as a stipulation on limitation of liability, for it was given only for the benefit of the libellant in such case. There is, however, authority for the view that the appraisement made in the *Wilhelmsen* case may be adopted as the value of the vessel in the proceeding for a limitation of liability, if it was fairly made.

The Benefactor, 103 U. S. 246.

The motion to vacate the order appointing appraisers will therefore be overruled, without prejudice, however, to any questions which may properly arise on an application to confirm the appraisement made by them or for an order limiting liability, if such an application shall hereafter be made.

Filed November 3, 1913. A. M. Cannon, Clerk.

And there was duly filed in said Court, the Depositions taken in said cause and the testimony taken in Court upon the trial, and the exhibits introduced in evidence, in words and figures as follows, to wit:

*In the District Court of the United States in and for
the District of Oregon.*

IN ADMIRALTY—No. 6111.

KNOHR & BURCHARD, the owners of the German
bark "Thielbek,"

Libelants,

vs.

The Norwegian steamship "THODE FAGELUND,"
her tackle, apparel and furniture, and THE
PORT OF PORTLAND, a municipal corporation,

Respondents.

WILHELM WILHELMSSEN, Tunsberg, Norway,
and M. B. HANSEN, Master,

Claimants.

Pursuant to stipulation heretofore entered into between the parties in the above entitled cause, the several parties met at the office of Wood, Montague & Hunt, 616 Spalding Building, Portland, Oregon, the 25th day of September, 1913, at 9:30 o'clock a. m.

Present: Mr. C. E. S. Wood, for the libelants; Mr. W. C. Bristol, for the respondent "Thode Fagelund"; Mr. Wirt Minor, for the respondent The Port of Portland. Whereupon, the following proceedings were had and done, to wit:

It is hereby stipulated by and between the parties that the testimony taken in the above entitled cause, or any part thereof, may be used in the cause now pending, entitled, Wilhelm Wilhelmsen, libellant, vs. The Ship "Thielbek," or in any proceeding arising out of the collision in question.

Mr. Zera Snow appeared and stated that he was not at this time prepared to enter an appearance in this or any cause in the matter, but it was stipulated and agreed that if in the future he should intervene, or bring an original libel, that the testimony taken in this cause could by him be used as testimony taken in his own proceedings.

CAPTAIN A. BERGMANN, master of the German ship "Thielbek," called as a witness for the libellants, being first duly sworn, testified as follows:

QUESTIONS BY MR. WOOD:

Q. Captain, what is your name?

A. Albert Bergmann.

Q. Are you the master of the "Thielbek" on her present voyage, and were you the master at the time of the collision, August 24th?

A. Yes.

Q. How long have you followed the sea?

A. Twenty-two years.

Q. And in what capacity?

A. Well, as mate—

Q. And seaman?

A. And seaman.

Q. How long have you been master?

(Testimony of Captain A. Bergmann.)

A. Six years.

Q. And how long have you been master of the "Thielbek"?

A. About three years.

Q. How long, about, is the "Thielbek"?

A. Three hundred feet, about.

Q. Three hundred feet, about?

A. Yes, sir.

Q. And what is her breadth of beam?

A. About forty-five feet.

Q. Was she in ballast this trip?

A. She was in ballast.

Q. What was she drawing?

A. Thirteen feet, six inches.

It is stipulated that the "Ocklahama" and Pilot Pease were in the employment of The Port of Portland and furnished to the "Thielbek" by The Port of Portland.

Q. Now, on the night in question — do you remember what night that was, by the way?

A. On the 23d.

Q. Twenty-third and 24th of August?

A. Yes, sir. The collision, you mean?

Q. Yes.

A. That was the 24th of August.

Q. In the morning?

A. Yes.

Q. About what time?

A. About three o'clock.

(Testimony of Captain A. Bergmann.)

Q. What time did the "Ocklahama" make fast to the "Thielbek"?

A. He came in the evening the night before, about half past ten.

Q. And were you up and about on deck at that time?

A. Yes, I was on deck.

Q. Who was in charge of the "Ocklahama" and took charge of fastening her to the "Thielbek"?

A. The captain and the pilot, both of them.

Q. The captain and the pilot?

A. Yes.

Q. Do you know who the captain of the "Ocklahama" is?

A. Yes.

Q. What is his name?

A. Turppa.

Q. Captain Turppa?

A. Captain Turppa, yes, sir.

Q. Who was the pilot?

A. Pease.

Q. Where were you lying when you made fast?

A. It was about four miles west from Astoria.

Q. Near the Young River?

A. Near Young River.

Q. And in what situation as to the Oregon shore? Were you close to the Oregon shore?

A. Well, no. We was at the proper anchor-place.

Q. Then you turned in, I believe?

(Testimony of Captain A. Bergmann.)

A. Well, after we had our tugboat fast I turned in.

Q. And you were in bed at the time of the collision?

A. Yes, I was not on deck at that time.

Q. And you were not on deck at the time they got under tow from Young's River?

A. Yes, for only a couple of minutes, for two or three minutes, just before the collision; about ten minutes before the collision, or fifteen minutes.

Q. Before the collision?

Q. (Mr. Bristol) You were on deck then just for two or three minutes?

A. Yes, I saw everything was in good order and went into my room again.

Q. Well, that was when you started up under tow of the "Ocklahoma"?

A. Yes, it was in tow.

Q. In tow and going?

A. Yes, sir.

Q. And you remained on deck then? A short time after you were towing?

A. Yes.

Q. And then turned in?

A. Yes.

Q. At the time of the collision, though, you were not on deck?

A. No, I was not on deck.

Q. About what speed would you say the "Ockla-

(Testimony of Captain A. Bergmann.)

hama" was making with the "Thielbek" when she was towing up?

A. Six miles; about that.

Q. You don't know, of your own knowledge, whether she slowed down or not?

A. No, I don't know that.

Q. When next did you come on deck?

A. Well, I saw we were into the Norwegian. After the collision. I was on deck as soon as I heard it.

Q. It was the sound of the collision that brought you on deck?

A. Yes, sir.

Q. What did you find the situation of the two ships at that time? How was the "Thielbek" into the "Fagelund"?

A. She was in the port bow of the "Fagelund."

Q. About how deep had she got into the "Fagelund"?

A. Eight or ten feet.

Mr. BRISTOL: I will say, for the more complete information of counsel, that I have, as of the time of the accident in question, accurate photographs taken of both ships which will be available to counsel at any time.

Mr. WOOD: Showing measurements of the hole?

Mr. BRISTOL: Yes, showing measurements of the hole. And I am going to put them in at the time of trial.

Q. Now, did you notice the dredge "Chinook"?

(Testimony of Captain A. Bergmann.)

A. Yes, I saw the dredge "Chinook."

Q. How was the "Chinook" lying in the stream at the time you saw her?

A. She was about cross-ways over the river with her stern lying up the river.

Q. And about how far away from the "Thielbek"?

A. About 150 feet.

Q. Now, did the "Ocklahama" break loose from the "Thielbek"?

A. Yes, her lines carried away altogether.

Q. How soon after the noise of the collision did you come on deck?

A. Oh, I was on in ten seconds.

Q. Were you already dressed?

A. No, I was not dressed.

Q. Did you stop to dress?

A. No, I just went out as I was.

Q. Where was the "Ocklahama" at the time you went out and after the collision, when she stopped; where was she in relation to the "Thielbek"?

A. She was about midships and about forty feet off from our port side.

Q. Had she run up alongside of the "Fagelund"?

A. No, I hadn't seen her.

Q. Who was in charge of the deck during the time of the towing and at the time of the collision?

A. First Officer Eggars.

Q. Now, when you started towing, did you notice what side-lights were being carried?

(Testimony of Captain A. Bergmann.)

A. No. I didn't look after the side-lights.

Q. Well, I don't mean whether you looked after them, but did you know what side-lights were on?

A. Yes, I know that.

Q. What side-lights were being carried?

A. One light on the port and one on the star-board.

Q. And where were they placed?

A. The red one on the "Ocklahama" on the port side, and the green one on our ship on the starboard side.

Q. Was the "Thielbek" carrying any red light?

A. No.

Q. What kind of lights were these, with reference to the mode of lighting?

A. It was electric light.

Q. At the time of the collision was it yet daylight?

A. Yes, it was nearly daylight.

Q. But was it fully daylight?

A. Oh, no, it was still dark.

Q. Have you got your bills for repairs for the damages caused to the "Thielbek"?

A. Yes.

Q. Describe the damage to the "Thielbek"; where she was hurt and the size and amount of the injury to the "Thielbek." What kind of a hole was in it?

A. Two plates were carried away on the star-board side.

(Testimony of Captain A. Bergmann.)

Q. And any other injuries?

A. Some other plates on the port side and other plates were all bent.

Q. How many plates were bent?

A. Six on each side; twelve altogether.

Q. What did you do toward repairing her? Put her in dry-dock?

A. No. We put her in dry-dock only for examination as to the bottom.

Q. Didn't keep her in dry-dock?

A. No, sir.

Q. Let me see your bills for the repairs.

A. I haven't got them here.

Q. They have been rendered, haven't they? Are the repairs completed yet?

A. No, not yet.

Q. Who is doing the repair work?

A. The Portland Boiler Works.

Q. What is their bid?

A. \$7,250.

Q. Was that bid accepted?

A. Yes, sir.

Q. That is the rate?

A. Yes, sir.

Q. Will you produce the vouchers when you get them, showing your payment?

A. Yes, sir.

Q. Did you lose anything in supplies?

A. Well, not yet.

(Testimony of Captain A. Bergmann.)

Q. What was the cost of having the survey on the "Thielbek"?

A. (Examining paper) About \$300. We don't know exactly. About.

Q. You don't know exactly?

A. No.

Q. Have you paid it yet?

A. No; it is not paid yet.

Q. How do you arrive at the \$300? What is your reason for thinking it is \$300?

A. From the number of times that they were on board.

Q. In the items that you listed to me the other day, I find "cables." Did you lose cables? How did you lose them—oh, I see, you mean telegrams.

A. Yes, it is telegrams.

Q. How much have you spent on them?

A. Say about \$90.

Q. Have you been obliged to pay commissions to your port agent? Who is your port agent?

A. Kerr-Gifford.

Q. Are you obliged to pay commission to them?

A. Yes, sir.

Q. Do you know what it is?

A. Yes, \$200.

Q. Now, I notice you gave me an item of \$147 to Henry Hewitt. He is an insurance man?

A. Yes.

Q. How does that come in as expense?

A. He did some business for my ship.

(Testimony of Captain A. Bergmann.)

Q. Not as an insurance man?

A. Yes, we have to go always to him.

Q. What was the business?

A. He sent telegrams and gave me advice.

Q. He acted as your agent?

A. No. The agent is Kerr-Gifford.

Q. Was he acting for the insurers, Henry Hewitt?

A. Yes, for the insurers; for the Hamburg underwriters.

Q. (Mr. Bristol) You mean he is the agent for your ship's underwriters?

A. Yes.

Q. Well, now, you gave me an item of "supplies." What does that refer to? I suppose you had lost supplies?

A. Yes, we lost some articles in the collision.

Q. How? What articles and how did you lose them?

A. There were some beef-barrels and blocks, some paint, oil.

Q. Have you got an estimate of the value of that stuff?

A. Yes; \$718.

Q. You had her bottom painted, did you?

A. Yes, sir.

Q. How do you connect that up with the collision?

A. Well, the ship was 24 hours in the dry-dock and it was very hot weather at that time. It was a

(Testimony of Captain A. Bergmann.)

hot day, and a thing that spoils the paint is that hot weather.

Q. How long was she on the dry-dock?

A. Twenty-four hours; no, 32 hours.

Q. Your theory is that 32 hours in the air in such hot weather would spoil the paint?

A. Would spoil the bottom paint.

Q. And you would have to repaint?

A. Yes, sir.

Q. How much have you paid for that?

A. Four hundred sixty-five dollars, including labor.

Q. Does that include the dockage charge?

A. Yes. Everything is included.

Q. Are you prepared to state at this time what your daily net loss is in being laid out of charter? Demurrage?

A. Thirty-three pounds per day.

Q. Have you got the charter-party?

A. Yes, sir. (Producing same.) Thirty-three pounds, one shilling, demurrage.

Q. (Mr. Bristol) You figure that, Captain, upon your tonnage-rate under your charter?

A. Yes, sir.

Q. (Mr. Bristol) Registered tonnage?

A. Registered tonnage.

Q. (Mr. Bristol) And you figure so many pounds per day under your charter terms here?

A. Yes.

(Testimony of Captain A. Bergmann.)

Q. (Mr. Bristol) That was three pounds and a shilling—threepence a ton?

A. Yes, sir.

Q. (Mr. Bristol) That is the way you arrive at the thirty-three pounds, one shilling, per day?

A. Yes, sir.

Mr. WOOD: We will offer this in evidence, with permission to withdraw it and substitute a certified compared copy. (Marked "Libelant's Exhibit 1.")

Q. Are there any other items of damage you know of—you yourself personally know of?

A. No, there is no more; that is all. The German consul from Seattle was here a few days ago, giving testimony, which cost me \$100.

Q. (Mr. Bristol) Extending your protest? Making your marine declaration?

A. Yes, sir.

Q. When this is all cleaned up and your bills are all paid, I want you to bring them to me as vouchers and I will then put them in the case to correct your testimony.

A. Yes, sir; very good.

Q. Now, when you got on deck after the collision and saw the "Chinook" about 150 feet away, which way was the "Thielbek" lying in relation to the channel?

A. She was lying up-channel.

Q. The "Thielbek" was lying up-channel?

A. Yes, sir.

(Testimony of Captain A. Bergmann.)

Q. Was she lying across the river?

A. No; lying up-channel; along the channel.

Q. She was going up the river, wasn't she?

A. Yes, sir.

Q. Well, do you mean she was lying with her bow up-stream?

A. Yes, sir, with her bow up-stream.

Q. And how far off would you guess was the Oregon shore,—the docks? Did you see them?

A. Yes; about 350 feet.

Q. Could you see the docks themselves, or just the lights?

A. I could see some docks too; docks and lights.

Q. Do you know how wide the channel is at the point of collision?

A. A thousand feet, I heard.

Q. Estimating it to be 1000 or 1500 feet, assuming it to be about 1500 feet, where was the "Chinook," on what side of the channel was she lying?

A. The "Chinook" was on the north side.

Q. Towards the Washington shore?

A. Yes, sir.

Q. Now, if you were only 150 feet off the "Chinook" out of 1500 feet in width, the Oregon shore must have been more than 350 feet?

A. I think so. I can't say exactly.

Q. That is your guess?

A. That is my guess.

Q. It was still dark, wasn't it?

A. Yes, it was dark.

(Testimony of Captain A. Bergmann.)

CROSS-EXAMINATION.

Questions by Mr. Bristol:

Q. The dredge "Chinook" then lay upon your port side?

A. Yes, the port side.

Q. And the docks lay upon your starboard side?

A. Yes.

Q. And do you think that there was more or less than 350 feet between your ship and the dock-lights?

A. Yes, that's what I guess.

Q. Was it more than 350 feet or less than 350 feet?

A. That is my guess.

Q. Well, now, you think you were about that distance. On the same guess you saw the "Chinook"—from what position on your ship did you see the "Chinook"? When you came on deck where were you?

A. She was on our port side.

Q. Where were you on your ship?

A. I came from aft and was going forward to the forecastle-head.

Q. Did you take these observations you have testified about from the forecastle-head or from the aft part of your ship?

A. From the fo'castle-head.

Q. At the time you made these observations she was then attached to and a part of the "Thode Fagelund"?

A. Yes.

(Testimony of Captain A. Bergmann.)

Q. So the position you place your ship in was also the position of the "Fagelund"?

A. Yes.

Q. You think that was about 150 feet over your port bow from the dredge?

A. Yes, the stern.

Q. Over the port bow 150 feet and 350 feet to the dock?

A. Yes.

Q. That would make 500 feet?

A. Yes, sir.

Q. Then you must think the dredge "Chinook" took up about a thousand feet of that channel. Is that right?

A. No.

Q. How much room did that dredge "Chinook" take up that morning?

A. I don't understand.

Q. Let me put it this way: Suppose you had been navigating your ship yourself from your position on the forecastle-head. Was there room for you to go by on either side between the dredge or the dock and the "Thode Fagelund"? Plenty of room?

A. Oh, yes.

Q. Now, whereabouts,—your cabin is in the after part of your ship?

A. Yes, sir.

Q. And on which side of your ship, which quarter, I mean, was the tug's hawser?

(Testimony of Captain A. Bergmann.)

A. On the port side.

Q. Is that on the same side you have your cabin, or was that on the starboard side?

A. The starboard side.

Q. When you came on deck the first time that Sunday morning, was it just before or just after the tow started to move with your ship?

A. After the tow started.

Q. Had you weighed anchor?

A. Yes, sir.

Q. Did you hear the anchor coming up?

A. No. I didn't hear that.

Q. Have you got a steam-winch on your ship?

A. Yes, sir.

Q. You have got port and starboard hawse-pipes and anchors?

A. Yes, sir.

Q. What anchor had you down that morning before you started to tow?

A. The starboard anchor.

Q. The starboard anchor?

A. Yes, sir.

Q. And it was the haft of that anchor that was punched through your starboard-plates?

A. Yes, sir.

Q. In other words, it was your anchor-haft that ran into your ship rather than the bow of the "Thode Fagelund"?

A. Yes.

(Testimony of Captain A. Bergmann.)

Q. That was the same anchor that after you had lifted it with your winch you let it hang there as you were coming up the river?

A. Yes, sir.

Q. Now, when you lay in your bunk on your ship—do you sleep very soundly?

A. No. I heard those last two whistles blow from the "Ocklahama."

Q. The last two?

A. Yes, sir; I heard them.

Q. Did you hear any other whistles?

A. No.

Q. Didn't hear any other whistles?

A. No.

Q. How many whistles did you hear?

A. Only the two whistles.

Q. Only two?

A. Yes, sir.

Q. Two blasts?

A. Yes, sir.

Q. Now, when you came on deck, were you dressed when you came on deck at the time you started to tow?

A. Oh, yes, I was dressed then.

Q. Then you went back and went to bed?

A. Yes, sir.

Q. That was what time in the morning?

A. It was about 2:50, or 3 o'clock, I think.

Q. Now, do you know,—have you got your log here with you?

(Testimony of Captain A. Bergmann.)

A. No.

Q. Where is your log?

A. It is on board I guess.

Q. You made an entry in your log about when you started?

A. Yes, sir.

Q. Where is that log? I would like to look at that log. Where is the log-book?

A. On board.

Q. Where is your ship now?

A. At Victoria dock.

Q. Can't you send one of the boys down to get the log?

A. Yes.

(The First Mate states that the log-book is in his possession in his room and one of the men is sent for it.)

Q. At any rate, did you make the entries in that log yourself?

A. Yes.

Q. You made them yourself?

A. Yes, sir.

Q. How could you make the entries in that log when you were asleep?

A. I made them with the mate, together.

Q. The mate told you what happened and then you entered it in the log?

A. Yes. That is our law; the captain has to put it in.

(Testimony of Captain A. Bergmann.)

Q. That is the requirement of your German code?

A. Yes.

Q. When you entered that then in the log you entered it on what the mate had told you had happened?

A. Yes.

Q. And you entered it also on what the mate had told you was the time?

A. Yes, that is it.

Q. Do you remember what time you entered as the time that the "Thielbek" got under way?

A. That was just before three o'clock. He started with the anchor at 2:30.

Q. That is when you started to raise your anchor. Now, just listen and you won't get confused. When did your boat start to move through the water? What time?

A. That was just before three o'clock.

Q. That was just before three o'clock?

A. Yes.

Q. You stated in your libel, to which you swore, that it was five minutes past three o'clock. Where did you get that time?

A. That is out of the log-book somewhere.

Q. Why do you say it was just before three o'clock?

A. I don't know exactly.

Q. You swore to your libel that it was five minutes past three o'clock.

(Testimony of Captain A. Bergmann.)

A. I didn't say it was five minutes past.

Q. You swore in your libel that it was five minutes past three o'clock when you commenced to move up-stream.

A. It was about five minutes before or past; I don't know exactly.

Q. That makes a big difference in time, Captain Bergemann; a very big difference in time; ten minutes.

A. Yes, in this case I know.

Q. I want to know when your ship started to move and I call your attention to the fact that you swore in your libel she started to move at five minutes past three o'clock. Is that correct or not?

A. It must be correct. The mate he told me.

Q. Then you are mistaken in your testimony that she started to move just before three o'clock?

A. I don't know the time exactly. I didn't look at the clock at the time.

Q. (Examining copy of libel) You say here that the two vessels did not commence the voyage up the river until about five minutes past three the next morning.

A. That is all right.

Q. You swore to that when you signed this libel? That is correct?

A. Yes, sir.

Q. How long before your ship started to move was it that you went on deck?

A. Well, I was not on deck before she started.

(Testimony of Captain A. Bergmann.)

Q. How long had she been going when you came on deck?

A. I think about five minutes.

Q. Where was your ship then, with respect to any head-land or object that you may have seen?

A. Well, I hadn't seen anything. I just looked after the tug if she was hooked fast and everything was all right.

Q. Now, in order that we may know, you found everything hooked fast all right, did you?

A. Yes.

Q. In order that we may know how you found that to be all right, tell us how the tug was fastened?

A. It was fastened by the stern on the port side.

Q. On the port quarter of your ship?

A. Yes, sir.

Q. Whereas, the tug "Ocklahama" had a stern line out to your starboard quarter and also from the starboard quarter of the tug to your port quarter?

A. Yes.

Q. Was that a manila rope or a steel rope?

A. Half and half; half steel and half manila.

Q. Where was the steel part of that cable fastened?

A. On our port quarter chock.

Q. Around your port quarter chock?

A. Yes, sir.

Q. Now, did she have any spring lines out?

(Testimony of Captain A. Bergmann.)

A. Well, I don't remember that.

Q. There must have been more than one line fastened to your ship?

A. Certainly.

Q. Just state it your own way. Where did you see the other line, if there was any, fastened.

A. There were two lines fastened forward.

Q. One of those lines led from the poop of the "Ocklahama" up to the fore part of your ship?

A. Yes, sir.

Q. What was that line composed of?

A. The same: half and half; half manila and half rope.

Q. Where was the steel end of that line?

A. On board our ship.

Q. And fastened to your port bow?

A. Not to the bow; amidships.

Q. It was a spring line from the midship-section?

A. Yes, sir.

Q. About the waist of your ship, at the chock about the waist of your ship opposite the main-mast?

A. Yes, about the main-mast.

Q. Now, that line, did you notice where it was fastened, to her port chock on her port bow?

A. Yes, I think so. I don't know; I didn't see that.

Q. I think you said you looked about to see that everything was properly fastened?

(Testimony of Captain A. Bergmann.)

A. I only looked on my ship.

Q. Now, were there any other lines from the tug "Ocklahama" fastened on your ship than the two you have described?

A. Yes, there was one spring line aft.

Q. Where was that fastened on your ship, right by the mizzen-mast chock?

A. Yes.

Q. That led out of the side of your ship and went down on the "Ocklahama"?

A. Yes.

Q. Was that the same, steel or wire?

A. Half and half.

Q. I understood you to say that when you struck the "Fagelund" that the "Ocklahama" tore all that tow-line loose?

A. Yes, that is it.

Q. You say you were down the river at Young's Bay? I want to see if I have got it right. Four miles west of Astoria?

A. Yes.

Q. You anchored there in the afternoon of Saturday?

A. Yes, sir.

Q. What bearing did you have with reference to the land when you picked up your anchorage-ground?

A. I didn't make bearings.

Q. When you entered in your log that on Saturday you came to anchor in the roadstead of

(Testimony of Captain A. Bergmann.)

Young's Bay, did you enter in your log the then position of your ship?

A. No, I didn't put it down.

Q. Who brought you in over the bar?

A. I forget his name.

Q. What tug?

A. That was that sea-tug here from The Port of Portland.

Q. Was it the "Oneonta"?

A. No, the "Wallula."

Q. Where you came to anchorage in Young's Bay was where the "Wallula" cast loose, was it?

A. Yes, sir.

Q. She stood by until you dropped your anchor?

A. Yes, sir.

Q. That is the position you started from the following Sunday morning?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. Can you state whether or not you were near the Flavelle dock? Do you know where the Desdemona Sands lie?

A. No.

Q. Do you know where the light-house is on Desdemona Sands?

A. Yes, I know that.

Q. How far did you lie to the southwest of that light-house at anchorage?

A. I can't tell that.

(Testimony of Captain A. Bergmann.)

Q. Did you lie directly south of it, or did you lie westerly of it?

A. I think we lay a little east of that.

Q. Eastward?

A. Yes.

Q. You think you would be a little southeast of it?

A. Southeast? I don't know. I can't tell.

Q. Listen. What I am trying to fix, if I can, from your knowledge, is where your ship was when you started with that tug. You say about four miles west of Astoria?

A. Yes.

Q. That would be down toward the river's mouth, about four miles west of Astoria?

A. Yes, sir.

Q. You know various objects extend along the water-front for three or four miles; where had you measured that four miles from? From Smith's Point? Do you know where that is?

A. No. We were lying right across the river Young, by the bridge.

Q. How far from the bridge?

A. A mile.

Q. And immediately below the bridge?

A. No, just square off from the bridge.

Q. A mile north of the Young's River bridge?

A. Yes.

Q. A mile from the draw-part of the bridge or trestle-part?

(Testimony of Captain A. Bergmann.)

A. From the middle.

Q. You lay, then, a mile northerly of the Young's River railroad bridge?

A. Yes.

Q. And that point you fix four miles west of Astoria, when you started?

A. Yes, sir.

Q. You had been running about five minutes when you came on deck and saw everything fast and tight?

A. Yes, sir.

Q. Then you went to bed?

A. Yes, sir.

Q. All you heard after that was the two whistles of the "Ocklahama" and then the crash?

A. Yes.

Q. How long was it, if you can tell me, from the time you heard the two whistles to the collision? Can you estimate that time?

A. That was about 25 seconds.

Q. Can you estimate time so close as 25 seconds?

A. I heard that whistle from the "Ocklahama" and in a couple of seconds we were in collision with the Norwegian. When I hear that, I jumped out on deck. That was only 25 seconds; that is all.

Q. That would be less than half a minute?

A. Yes, about half a minute.

Q. Was it less than that?

A. I can't tell you; about half a minute.

Q. When you got on deck and found your ship

(Testimony of Captain A. Bergmann.)

fast in the bow of the "Thode Fagelund," what did you do?

A. I sent the third mate over the side to find the name of the steamer and find out what steamer it was.

Q. The steamer you struck?

A. Yes, sir.

Q. You say at that time, or when you came on the forecastle-head, how long did it take you to get from your cabin to the forecastle-head?

A. Only half a minute.

Q. It took you about as long for you to go the length of your ship as it did the "Ocklahama" from the time she blew the two whistles to the time of the collision?

A. Yes, about the same.

Q. Did you run?

A. Yes, I ran.

Q. Didn't stop to put your clothes on?

A. No.

Q. Did you see who was in the pilot-house of the "Ocklahama"?

A. No; I didn't look at that.

Q. Didn't notice that?

A. No.

Q. Now, while you were standing on your fore-castle-head, is it my understanding that the "Ocklahama" when she broke loose came up between you and the dredge and was off your port bow there? Is that right?

(Testimony of Captain A. Bergmann.)

A. I saw the "Ocklahama" only amidships.

Q. Only amidships of your vessel?

A. Yes, sir.

Q. And where did you see her after that?

A. She was always amidships.

Q. How long did you stay on the fore-castle-head?

A. I staid about half an hour.

Q. Then if it be true that the "Ocklahama" was always amidships of your vessel, you didn't see her go up alongside the "Thode Fagelund" and ask her if they wanted any assistance?

A. No, I didn't hear that.

Q. Although you staid on your fore-castle-head half an hour?

A. Yes, sir.

Q. You were right there where you could see and observe everything?

A. Yes, sir.

Q. The "Ocklahama" didn't go and ask if they wanted any assistance?

A. No, I didn't hear it.

Q. You know that, as a seafaring man, to be the duty of a navigator to inquire if the party injured needs assistance?

A. Yes.

Q. You didn't hear the "Ocklahama" do that?

A. No.

Q. Anybody present with you on that fore-castle-head?

(Testimony of Captain A. Bergmann.)

A. The mate was there.

Q. Your first officer?

A. Yes, sir.

Q. He was there also?

A. Yes, sir.

Q. Were you and he talking together?

A. Yes, sir.

Q. Is this the same man you pointed out as the first officer who made the entries in the log at your direction?

A. Yes, sir.

Q. Now, who did the writing in the log?

A. I did it myself.

Q. You put down what the mate told you to put down?

A. Yes, I put that down; I asked the mate and I put down also what I saw and observed.

Q. With reference to the bottom of your vessel, did you find that bottom OK?

A. Yes, sir.

Q. In good condition?

A. Yes, sir.

Q. Was she making water?

A. No, not a bit.

Q. The "Thielbek" is a pretty sharp-prowed boat, isn't she?

A. Yes, sir.

Q. A steel vessel?

A. Yes, sir.

(Testimony of Captain A. Bergmann.)

Q. Built after the German Lloyd's requirements?

A. No, English Lloyd's.

Q. How long did it take you to get free from the "Thode Fagelund"?

A. About an hour; about an hour and a quarter.

Q. An hour and a quarter, you think?

A. Yes, sir.

Q. The shape of the stem of the "Thielbek" is a sort of Ogee, isn't it?

A. Yes, sir, like that. (Indicating.)

Q. And naturally when she struck, being light and in ballast, she would ride?

A. Yes, sir.

Q. And that carried her bow pretty well up on to the "Thode"?

A. Yes, a little bit.

QUESTIONS BY MR. MINOR:

Q. What are these commissions for?

Mr. WOOD: The witness doesn't understand. The payment—damages.

Q. Port agents. How are those commissions figured?

A. You know always there are agents who do the business and they get always something. I know that.

Q. You paid Henry Hewitt \$147. What was that for?

A. That is for the business. He sent some telegrams for me and gave me good advice.

(Testimony of Captain A. Bergmann.)

Q. Did he pay for the telegrams, or did you?

A. I paid them myself, but he sent some telegrams himself.

Q. This \$90 that you paid for telegrams you paid to Henry Hewitt?

A. No, to Kerr-Gifford.

Q. The \$200 you paid to Kerr-Gifford?

A. \$200, yes, and then this \$90. \$290 altogether for telegrams.

Q. You paid Henry Hewitt \$147?

A. Yes, sir.

Q. That was for advice?

A. For advice to the captain and to do the business of the underwriters for the ship's business; he always gets something.

Q. You paid \$300 for survey?

A. Yes.

Q. How many times was he on deck?

A. Three times on deck, or four.

Q. Which was it, three or four?

A. Four times, with two men.

Q. Who was the surveyor?

A. Captain Veysey and Mr. Ballin.

Q. Did they make a report to you?

A. Yes, sir.

Q. Have you got it?

A. No.

Q. (Mr. Bristol) Where is it?

A. I have got it on board. It isn't all figured yet.

(Testimony of Captain A. Bergmann.)

Q. (Mr. Bristol) You ought to have that produced here, Captain.

A. Yes.

Q. You say you lost some beef-barrels?

A. Yes.

Q. How many?

A. Eight.

Q. Eight beef-barrels?

A. Yes, sir.

Q. Just barrels, or filled with beef?

A. Four beef; four pork.

Q. Just lost the barrels?

A. Yes, sir.

Q. How large are those?

A. The beef 300 pounds and the pork 200.

Q. You mean to say that you lost the beef also?

A. The beef is what we lost; we lost some of that.

Q. You only testified to losing barrels.

A. The meat was all in the fore-peak and when this collision came it smashed together to pieces; eight barrels.

Q. How much pork was in a barrel?

A. 200 pounds.

Q. How did you lose that, what became of it?
What became of that beef and pork?

A. We lost that.

Q. What became of it?

A. It smashed and the pickled meat ran out.

(Testimony of Captain A. Bergmann.)

Q. You say you lost some blocks. What kind of blocks?

A. Some gin-blocks.

Q. How many?

A. Eight.

Q. You say you lost some oil?

A. Yes, sir.

Q. How much oil?

A. 50 gallons.

Q. You say you lost some paint?

A. Yes.

Q. How much paint?

A. We lost 400 pounds of red lead and 100 pounds black paint.

Q. How did you get the value of this stuff at \$718?

A. We got three bids for that.

Q. (Mr. Wood) Three bids to replace it?

A. Yes, sir.

Q. Was the bid itemized?

A. Yes, sir.

Mr. WOOD: You show me these bids. Have you got them?

Mr. MINOR: I would like to have them.

Q. Did you have an inventory of the beef and pork and paint and oil and blocks?

A. I have got a list.

Q. Did you have a list or inventory of them?

A. Yes, I have a list.

Q. Where is the list?

(Testimony of Captain A. Bergmann.)

A. I haven't got it here. Mr. Wood will bring it.

Q. I don't understand that you heard any signals from the "Fagelund"?

A. Yes, I heard that.

Q. You heard it from the "Fagelund"?

A. No, not from the "Fagelund."

Q. You heard two whistles from the "Ocklahama"?

A. Yes, two whistles from the "Ocklahama."

Q. What officer was in charge of your boat at the time?

A. The "Ocklahama"?

Q. What officer was in charge of your ship?

A. The first mate and the third mate.

Mr. WOOD: Counsel for libelant produces the three itemized bids from F. C. Hagemann Co., Boston Packing Company and Anderson & Crowe.

Q. How much pork was in these barrels?

A. Altogether, 800 pounds.

Q. 800 pounds of pork?

A. Yes, sir.

Q. 200 pounds to the barrel?

A. Yes, sir.

Q. How much beef was in the barrel?

A. 300 pounds a barrel.

Q. These blocks that you had the bid on were the same as the other blocks you had on the ship?

A. Yes, the same blocks for discharging the cargo.

(Testimony of Captain A. Bergmann.)

Q. Did you have any blocks left for that purpose on the ship?

A. No, except a couple of old ones.

Q. These blocks were broken and not lost, then?

A. Some of them were lost and some broken.

Q. Now, the blocks which you got in lieu of those which were broken or lost, were they the same kind?

A. Yes, sir.

Q. The same size?

A. Yes, sir.

Q. The same kind in every way?

A. Yes, sir.

Q. How many blocks did you lose?

A. It was eight.

Q. Altogether?

A. Yes, sir.

Q. What kind of blocks were they?

A. Wooden.

Q. Were they sheave-blocks?

A. Yes, sir.

Q. Just eight altogether?

A. Yes, sir.

Q. There was a heavy tackle-block you have here?

A. Yes.

Q. Did you lose one of those?

A. Yes.

Q. This gin-block, did you lose one of those?

A. Yes.

(Testimony of Captain A. Bergmann.)

Q. How many?

A. I don't know; there were two I think; I have got it all there on the paper. I have got it somewhere.

Mr. WOOD: I can stipulate that he made that up from reports, or ask him.

Q. You don't know what you did lose, then?

A. No, it is all there on the report.

Q. From whom did you get your reports of loss?

A. From the mate.

Q. Which mate?

A. The chief mate.

Mr. MINOR: I suppose, Mr. Wood, you are going to show the loss by the chief mate?

Mr. WOOD: Yes, sir.

Q. Personally, then, you don't know about the items of this list?

A. I have got an inventory book there on board.

Q. (Mr. Wood) Will you please produce your inventory?

A. Yes, sir.

Q. The collision didn't cause this painting of the bottom, did it?

A. Yes, I believe so.

Q. Why?

A. You know when a ship stands for 32 hours in dry-dock in the hot weather, it spoils the paint; the bottom paint.

Q. The paint wasn't hurt by the collision was it?

A. Yes, it was a little bit hurt on the stern.

(Testimony of Captain A. Bergmann.)

Q. About how much?

A. Fifty feet.

Mr. WOOD: We don't claim that it was hurt by the collision as a material item, only about 40 or 50 feet scraped.

Mr. BRISTOL: But you do claim that arising from the necessity of having to dock the ship and the exposure of the elements to the paint, it made it necessary to repaint it?

Mr. WOOD: Yes, for putting it back into the water again.

Q. I understand, Captain, that it was not necessary to dock this vessel to make the repairs?

A. No, not for making the repairs; no.

Q. Why was it necessary to dock her then at all?

A. Yes, it was necessary because we had a small hole about two feet over the water-line on the star-board side. I thought there was some more there down below; some small holes.

Q. A small hole, you mean?

A. In our plates.

Q. About two feet above the water-line?

A. Yes, sir.

Q. Couldn't you discover any holes without docking it?

A. No, sir.

Q. You couldn't discover that?

A. No, sir.

Q. Why did you have to pay the German consul \$100?

(Testimony of Captain A. Bergmann.)

A. That is his fee.

Q. What for?

A. That he make up our maritime declarations.

Q. You paid him \$100 for that?

A. Yes.

Q. How long was he engaged on that?

A. That was one morning from 9 o'clock to 3 in the afternoon.

Q. For that he charged you \$100?

A. Yes.

Q. Do you know how that fee is arrived at, what you paid him? Do you know how you arrived at that charge? How it is he figured that?

A. No, I don't know that. I haven't got the bill yet.

Q. How do you figure your demurrage?

A. Well, with the charter-party. In the charter-party it is threepence per registered ton.

Q. Did you see the "Fagelund" at all until you came on deck after the collision?

A. Yes, I saw her.

Q. Where were you when you saw her?

A. I came aft on the forecastle-head.

Q. Did you see her before you got on deck?

A. No, no; not before.

Q. I understand you to say that the whistles from the "Ocklahama," you think were about 25 seconds before the collision?

A. Yes.

(Testimony of Captain A. Bergmann.)

Mr. MINOR: Mr. Wood, I would also like you to produce the bid of the Portland Boiler Works.

Mr. WOOD: The report on which the bid was made?

Mr. MINOR: Yes. And the bill of the German Consul; the inventory; the bill of Kerr-Gifford, which I understand includes \$90 which he paid for cables.

Mr. WOOD: No. it doesn't include it.

Mr. MINOR: I understand they paid the \$90.

Q. They paid the \$90 for the cables, didn't they?

A. Yes, sir.

Mr. MINOR: And the painting bill and the dock-age bill; the bill of Henry Hewitt; also, the report of the surveyors and their bill.

Mr. BRISTOL: When he produces the log, I have a few questions. Mr. Minor's questions brought up a couple I would like to ask.

QUESTIONS BY MR. BRISTOL:

Q. You cut some rivets on the way up, didn't you?

A. On the way up?

Q. Yes.

A. No, sir.

Q. When did you cut those rivets?

A. We started at Linnton.

Q. How many straight lines of rivets did you cut aboard your starboard bow?

A. I don't know.

(Testimony of Captain A. Bergmann.)

Q. Did you cut those rivets down to where you found this small hole you told Mr. Minor about?

A. No.

Q. How did you find this small hole?

A. We found it at Astoria.

Q. Before or after the collision?

A. After the collision.

Q. After the collision?

A. Yes, sir.

Q. Was that small hole from the collision?

A. Yes.

Q. What was it caused by?

A. Well, I think one of the plates from the "Fagelund" went into it.

Q. Two feet above your water-line?

A. Yes.

Q. And you were running light?

A. Yes.

Q. You think one of the plates of the "Fagelund" went in there?

A. Yes.

Q. What kind of a hole was it, Captain?

A. Like that. (Indicating.)

Q. Does that represent the breadth and width of it, about three inches long and two inches wide punched through on your starboard side?

A. Yes.

Q. And about two feet above your water-line?

A. Yes, sir.

Q. When you were cutting these rivets down

(Testimony of Captain A. Bergmann.)

there at Linnton, did you discover any other hole?

A. No.

Q. What was the idea of cutting down those rivets?

A. To fix it up again.

Q. But you cut the rivets pretty well back, didn't you? Pretty well down and back, didn't you?

A. We had to do that.

Q. Did you do it yourself?

A. Not myself; the contractor did that.

Q. The Portland Boiler Works?

A. Yes.

Q. They were working at Linnton?

A. Yes.

Q. When did you come to anchor in the lower bay? What time Saturday?

A. Saturday?

Q. What time Saturday did you anchor in the lower bay?

A. Which lower bay do you mean? Astoria?

Q. When you came in over the bar with the "Wallula," what time did she bring you in?

A. Half past one, I think.

Q. On Saturday?

A. Saturday.

Q. And you anchored when?

A. We anchored there at that time.

Q. At half past one? Were you lying at the place where the "Ocklahama" picked you up from

(Testimony of Captain A. Bergmann.)

half past one Saturday until three o'clock the following morning?

A. Yes, sir.

Q. You only had this starboard-anchor out?

A. Yes, but the other anchor was clear, all ready to go.

Q. Clear at the time of the collision?

A. Yes, sir.

Q. When she was riding there in Young's Bay, with her anchor down, did she always stay with her head up-stream?

A. I can't say that because I don't know. As soon as we anchored I went on shore and didn't take any notice.

Q. Did you get far enough uptown, Captain, to know whether the "Chinook" was in the river-channel?

A. No.

Q. Did you know she was anchored there?

A. No.

Q. That is all.

REDIRECT EXAMINATION.

Questions by Mr. Wood:

Q. Captain, in reference to these bids for the lost supplies on which Mr. Minor examined you. I understand that you had an inventory on the ship of supplies?

A. Yes.

Q. And then after the collision with this inventory and your officers you made up the loss that

(Testimony of Captain A. Bergmann.)

you had sustained by the collision?

A. Yes, sir.

Q. And then you called for these bids, which are the things you lost in the collision and no more, and the same kinds of things?

A. Yes.

Mr. WOOD: I offer this as mere memoranda in connection with his testimony, to explain it. (Marked, "Libelant's Exhibit 2.")

Q. Now, about the paint, I understand that your contention is that you didn't have to put the ship on the dry-dock to repair her, but you did have to put her on dry-dock to see how far she was injured?

A. Yes.

Q. And that putting her on the dry-dock and examining her for this purpose, she was obliged to stay there for 32 hours?

A. Yes, sir.

Q. And in the hot weather the paint was so injured that to put her back in the water again required fresh painting?

A. Yes, sir.

Q. This hole you say was down near the water-line, was that there before the collision?

A. No, no; it was after the collision.

Q. Now, I wish you would take a pencil here and a piece of paper and draw the mouth of the river down where you were anchored and locate the bridge across Young's River and then locate your

(Testimony of Captain A. Bergmann.)

position by that bridge. I don't mean in distance, but the direction.

(Witness does so.)

Mr. BRISTOL: Suppose we can agree, you, Mr. Minor and I, that this is Smith's Point (indicating); suppose we can agree that this is the trestle and that this is the draw-pier; that that is the draw-bridge and this is the trestle running across the river and this is the mouth of Young's River. May the Captain mark on there where the ship lay, this being south, or approximately so, and this being approximately west, and this being up the Columbia?

Q. Now, give about the way that you were lying in relation to that draw-bridge here?

A. We were lying on the north; no, north from this bridge.

Q. (Mr. Bristol) How far north from the bridge?

A. About a mile. We were lying about here.

(Witness marks on the plat.)

Q. (Mr. Bristol) The bridge was right abreast of you?

A. Yes.

Q. Above or below it?

A. Right abreast.

Q. You have drawn the ship with the stern opposite the bridge. You think the drawing is about right?

A. Yes.

(Testimony of Captain A. Bergmann.)

Q. (Mr. Bristol) A mile north, abreast of the draw of the Young's River bridge?

A. Yes.

(Marked "Libelant's Exhibit 3.")

Q. Just in the same way, as a rough sort of illustration, take this piece of paper and mark the position of the "Chinook" and the way she was lying up-stream and the position of the "Thielbek" and "Fagelund" off the "Chinook," and then mark the other side of the channel. Draw the channel first and then put your ships in there.

(Witness does so.)

Q. This is the "Chinook" and this is the "Fagelund" and this the "Thielbek" and this the "Ocklahama"?

A. Yes.

Q. This is up-river?

A. Yes.

Q. Now, you think this distance here from "A" to "B" is about 150 feet?

A. Yes.

Q. You make your guess at this there as 350 feet?

A. Yes.

Q. (Mr. Bristol) That is just the point. Both of those cannot be right because the channel is 1500 feet wide and both cannot be right. I want to know which you were closer to, the "Chinook" or the Astoria dock?

A. We were closer to the "Chinook."

(Testimony of Captain A. Bergmann.)

Q. (Mr. Bristol) And you feel more sure of your estimate of 150 feet than of your 350 feet?

A. Yes, sir.

Q. (Mr. Bristol) You don't know how near the north edge of the channel the "Chinook" was anchored?

A. No.

Q. You don't know that?

A. No.

(Marked "Libelant's Exhibit 4.")

Q. Now, you said in answer to Mr. Bristol's question, that the "Ocklahama" was always amidships. You don't mean she was always amidships. She came up after the collision, when she broke and ran forward some?

A. She came up a little farther than amidships. She was lying on our port side.

Q. After she broke loose?

A. Yes.

Q. But she did come forward from where she was at the back when she was towing? She ran forward some?

A. Yes, a little bit.

Q. Can you translate this log-book?

A. No.

Q. (Mr. Bristol) You wrote it, didn't you?

A. Yes, but I cannot translate it into English.

Q. (Mr. Bristol) If you had rather have the mate translate it, go ahead.

Q. Who made this? (Indicating.)

(Testimony of Captain A. Bergmann.)

A. We made some copies of that.

Q. (Mr. Bristol) This is supposed to be the same thing that is in the book?

A. Yes, sir.

Mr. BRISTOL: I want to get that original German sheet in as an exhibit, if I can.

Mr. WOOD: I have no objection.

Mr. BRISTOL: I don't want to get that in before this is read, so that I know that paper is a copy of this.

The Captain being temporarily excused from the witness stand, the Third Officer, Mr. Herman Oehring, having been duly sworn, translates the contents of the log-book from German into English as follows:

"On the 27th of July we left Santa Rosalia harbor in ballast to sail for Portland, Oregon, During the voyage we had very large northerly winds so that we did not arrive until the 23rd of August, after a voyage of 57 days. On our anchorage off Astoria, the ship being inspected through the dock and Custom House officers was delivered."

Q. (Mr. Wood) What is the date of the entry?

A. 23rd of August. (Continues.)

"On the evening of the same day, about 11 p. m., the tug "Ocklahama" came alongside to tow the "Thielbek" to Portland. As we didn't have steam up to heave our anchor, we decided to stay until 2:30 p. m. of the following day

(Testimony of Captain A. Bergmann.)

and to have everything ready by that time to continue the voyage in the tow of the "Ocklahama." Everything was done according to this. It was clear weather and bright moon-shine, and the day was just breaking when, shortly after three o'clock, we continued on our voyage. The Chief Officer, W. Eggars, was on watch; the sailor Gerdes was on the lookout and the sailor Thygesin on the wheel. By order of the captain of the tugboat the wheel was put 'midships. The rest of the port watch was occupied in clearing the deck. The side-lamps were burning according to regulation. After we had been going for about 15 minutes a steamer was sighted lying across the channel of the Columbia to an anchor. This cross-lying of this steamer was evidently caused by the current of the stream at that time. Right after that there was sighted another steamer which showed her green light. His green light was forward of us and he gave two blasts with his whistle which were heard distinctly by every one on deck. On account of this signal, the 'Ocklahama' stopped her engines and there seemed to be no danger. After about three minutes the two blasts of the steamboat were repeated and answered by the 'Ocklahama' when all of a sudden the red light appeared, and as the ships had in the meantime approached to a couple of ship's lengths there was now a

(Testimony of Captain A. Bergmann.)

collision inevitable. The collision happened a few seconds after. The 'Thielbek' struck the steamboat on her port bow, a proof that the steamboat did not, according to her signal, try to pass with her starboard side to the starboard side of the 'Thielbek,' but directly opposed to her signal tried to cross the bow of the 'Thielbek.' The steamboat now dropped her port anchor and gave the danger-signal of four short blasts. Several plates of the 'Thielbek' on both sides of her bow were smashed and bent in. It was found out that there was no danger for the 'Thielbek' and all the damage was above the water-line. We anchored and the name of the steamboat was found to be the Norwegian steamboat 'Thode Fagelund.' It is to be remarked that the wheel on our ship was not moved but has been 'midships all the time. Later on it was found out that the cross-lying steamer was the 'Chinook,' a big four-masted ship which with her length of 450 feet narrowed the channel very much and prevented that the lights of the two ships could be seen at greater distance."

Q. (Mr. Bristol) Who is that signed by?

A. "A. Bergmann, Captain. W. Eggars, Chief Mate."

(Witness excused.)

CAPTAIN BERGMANN resumed the witness-stand and testified as follows:

(Testimony of Captain A. Bergmann.)

QUESTIONS BY MR. WOOD:

Q. Captain, I show you a copy in blue typewriting and will ask you who had that made out, a copy of what has been just read into the record?

A. Captain Rymer. He took it from this log.

QUESTIONS BY MR. BRISTOL:

Q. Who is Captain Rymer?

A. He is Anderson & Crowe's man.

Q. What did he have that made out for?

A. He made it so that we would have it to show.

Q. Who asked you for them?

A. We sent one to the owners.

Q. Who would Captain Rymer be interested in giving them to? Don't you know that Captain Rymer is a fast friend of Roy Pease, the pilot on the "Ocklahama"?

A. No, I don't know that.

Q. Don't you know that Captain Rymer got the copy of that log made to be used at the investigation before the inspectors?

A. No.

Q. Do you know that?

A. No.

Q. Do you know he didn't?

A. I know he didn't. He never gave it away.

Q. He never gave any away?

A. No.

Q. You know that yourself?

A. Yes, I know myself, because he made some copies and I took them at once on board.

(Testimony of Captain A. Bergmann.)

Q. Nobody gave any copies out but you?

A. Yes, only me.

Q. Did you know how many more Captain Rymer made?

A. No; he made only three.

Q. I understand you wrote this in German in that book this young man translated after the accident happened?

A. Yes, sir.

Q. How long after?

A. About four days, or three days.

Q. Who had been to see you in the meantime?

A. Well, nobody to see me.

Q. Nobody?

A. I don't understand.

Q. I don't think you do understand. In the four days you took to write up this account, who had seen you between the time of the collision and the time you wrote this account up, about this accident?

A. No one had seen me.

Q. No one.

A. Oh, yes, I saw a number of people, but I can't remember who. I was here in town.

Q. No, you were down at Astoria, not in town. Do you mean to say you didn't complete the writing of this log until you came to Portland?

A. Yes, but I didn't put it in at once. I put it in three days later.

Q. From one of those copies you wrote up?

(Testimony of Captain A. Bergmann.)

A. Not from that copy. He made that copy from this log-book.

Q. Who helped you prepare your log?

A. Nobody but the Mate.

Q. Only the Mate?

A. Only the Mate.

Q. Where is the original paper that you wrote the entries on with the Mate?

A. I can't give you that.

Q. Where is it?

A. That is aboard, I think.

Q. I want to see it.

A. What the Mate wrote out for me?

Q. I want to see the Mate's original story, that he wrote at the time of the accident to you, upon which you made this log-entry.

A. Yes, I think he wrote it. I think I can get it.

QUESTIONS BY MR. WOOD:

Q. Now, after the "Ocklahama" took charge of you and started up the river, and in fact from the time she made fast to the "Thielbek," did you have any charge of the navigation?

A. No.

Q. Nor any of your officers? Did the "Thielbek" have anything at all to do with the navigation?

A. No. Just to keep her helm amidships.

Q. By whose order did she keep her helm amidships?

A. By order of the captain of the "Ocklahama."

(Testimony of Captain A. Bergmann.)

Q. Was it Turppa or the Pilot, Pease, who gave that order?

A. I don't know that.

(Witness excused.)

Adjourned until 2 p. m.

At 2 o'clock p. m. all the parties being present, the following proceedings were had, to wit:

CAPTAIN A. BERGMANN resumed the witness-stand and testified as follows:

Questions by Mr. Wood:

Mr. WOOD: Captain Bergmann produces the bill and receipt of the German Consul at Seattle for making his declaration, \$100; a bill of Anderson & Crowe, receipted, for repainting the ship's bottom, \$465; and a bill of \$59.40 from the Oregon Dry-Dock Company.

Q. This bill of \$59 extra labor; what was the cause of that?

A. Oh, well, we had all the labor in the dry dock, waiting for the ship.

Q. Why couldn't you get her on the dry dock?

A. Because the Marshal stopped the ship.

Q. There was a delay of 75 hours?

A. Yes.

Q. This apparently is the Marshal's business, then?

A. Yes.

Mr. MINOR: So far as the bill of the German Consul is concerned, I object to that as no proper charge against The Port of Portland, and as incom-

(Testimony of Captain A. Bergmann.)

petent. So far as Anderson & Crowe's bill is concerned, and what was paid to them, I object to that on the ground that it appears that the accident did not injure the ship so as to cause it to be necessary to paint or clean the ship, but that those were repairs and improvements, betterments, not due at all to any negligence on the part of The Port of Portland, or occasioned in any way by the accident or collision. So far as the bill of Anderson & Crowe for extra labor, I object to that upon the ground that that was not caused by the collision, and did not result from the collision, but resulted entirely from the controversy between the two vessels and her owners and the Marshal, for which The Port of Portland is not at all responsible.

Mr. WOOD: Now, do you want copies of these reports in evidence?

MR. MINOR: I think it would be better.

It is stipulated that copies may be made of these and a translation of the German Consul's statement and these copies and copy by translation be substituted for the originals.

Q. Now, Captain, I want to show you a chart or blueprint entitled, "Columbia River, Point Harrington to Fort Stevens," on a scale of one foot to twenty thousand feet, No. L. C. R. 186, which will enable us perhaps to fix your anchorage situation as you guess it a little better. We understand your estimate of a mile from the drawbridge is only a guess, an estimate. The point on this blueprint

(Testimony of Captain A. Bergmann.)

lettered "Draw Bridge," down near the lettering "Young's Bay," is the draw bridge you referred to?

A. Yes.

Q. And here, abreast it, is a buoy, No. 14. Now, assuming this to be correct, about where would you locate your ship?

A. About there (indicating).

Q. About a full half inch to the west of Buoy 14?

A. Yes, sir.

(Witness marks same on the chart.)

Q. At the lead-pencil cross marked, "T," Captain Bergmann, is that it?

A. Yes, sir.

Q. We might, as long as we have got this chart, indicate where you think the position of the ship was when the collision occurred.

(Witness marks chart.)

Q. At a point marked "C," Captain Bergmann, between buoys No. 13 and No. 2. These parts are marked on the map within red circles. I think that is all for you, Captain.

QUESTIONS BY MR. BRISTOL:

Q. Captain, when you lay in your berth that morning, did you hear any bells?

A. What bells?

Q. Any bells at all?

A. No; no.

Q. Any gongs?

A. No.

Q. That is, all.

(Testimony of Captain A. Bergmann.)

The chart referred to is offered in evidence as marked by the Captain, and marked "Libelant's Exhibit 5."

Mr. WOOD: The Captain produces the original notes made by the First Officer, and from which the log-entry which has been read into the record was made.

Mr. BRISTOL: It doesn't appear yet that the log-entry was made from that.

Q. (Mr. Wood) I will then ask you, Captain, a few more questions before we go on. Is this sheet of notes, or writing, in your handwriting which you have produced for examination—in your handwriting or the Mate's?

A. The Mate's.

Q. Was it from this that the entry in the log which has been read in evidence was made up?

A. Yes.

Mr. WOOD: Then we will have to find out from the Mate what it contains.

Q. Now, you state you made up your log three or four days after the collision?

A. Yes.

Q. You appeared before the inspectors, didn't you?

A. No.

Q. The steamship inspectors?

A. No.

Q. Didn't you appear at all?

A. No—Oh, yes, I was before the inspectors.

(Testimony of Captain A. Bergmann.)

Q. You did appear?

A. Yes, I did appear.

Q. At the time you appeared before the inspectors was the log officially written up and signed before you went before the inspectors?

A. Yes, the log was written up and signed.

Mr. WOOD: Now, to keep it right in sequence, I will call the Mate.

(Witness excused.)

WILLIAM EGGARS, the Mate, called as a witness for the libelants, having been duly sworn, testified as follows:

Questions by Mr. Wood:

Q. What is your name?

A. William Eggars.

Q. You are the First Officer of the "Thielbek"?

A. Yes, sir.

Q. How long have you been going to sea?

A. Twenty-three years.

Q. In what capacities?

A. As ordinary seaman, A. B., and as Second Mate and First Mate.

Q. How long have you been with the "Thielbek"?

A. One year.

Q. I will show you a sheet of paper which was produced by Captain Bergmann, and ask you what that is?

A. You want this in English?

Q. No. Is that the sheet of paper which you

(Testimony of William Eggars.)

gave to Captain Bergmann for him to make the entry in the log?

A. Yes, sir.

Q. Now, who made that memoranda?

A. The Captain tell me to put it on a piece of paper and give it to him, and on Sunday morning about eleven o'clock I do so.

Q. You gave him that piece of paper?

A. Yes.

Q. He told you to give your account of the circumstance?

A. Yes.

Q. Will you read what that is in English?

(Witness translates same as follows:)

"Saturday, August 23d, in the evening, eleven o'clock. The towboat 'Ocklahama' was made fast alongside of the 'Thielbek' to bring the ship up to Portland and we was waiting until the 24th in the morning to make steam up on our donkey, to heave anchor. At 2:30 in the morning we was heaving anchor. About three o'clock we drew the anchor and made a start to go ahead. The starboard light was burning on the 'Thielbek.' It was made fast on the spanker-rigging by the men off the steamboat and at the same height of the side-light of the 'Ocklahama.' Mr. W. J. Eggars had the watch and Sailor Gerdes stands on the look-out. Sailor Thygesin stands at the wheel. The tow-boat was made fast on the stern end 'midships of the 'Thielbek.'

(Testimony of William Eggars.)

We site a steamboat on the port side which was lying at anchor. A short time thereafter we see a steamboat which shows a green light. The steamboat gives two short blasts with his steam whistle. The 'Ocklahama' stopped her engine. After three minutes we heard another two blasts which was answered from the 'Ocklahama.' At the same time the red side-light of this steamer came out and the green shut out. The steamboat let go his anchor; at the same time runs together and gives another four blasts with the steam whistle."

(The witness corrects his translation, saying it should not be "another four blasts," but "Gave four blasts.") Witness continues reading:

"The 'Thielbek' met the steamboat on the port side. The 'Thielbek' has a hole in the starboard and some plates were bent and on the port side the same. Six plates were bent. Our wheel was kept amidships."

Q. Is that all?

A. Yes.

Mr. WOOD: This original is offered for further inspection and comparison. (Marked "Libelants' Exhibit 6.")

Q. What time did the "Ocklahama" make fast to the "Thielbek"?

A. The 23d of August, about eleven o'clock.

Q. At night?

A. At night.

(Testimony of William Eggars.)

Q. Where was the "Thielbek" lying at this time, as near as you can fix it, in relation to the Astoria shore in relation to any landmarks or buoys?

A. About half a mile from the town of Astoria; a mile or a half mile down from Astoria.

Q. Half a mile or a mile down from the lower end of Astoria?

A. Yes.

Q. Half a mile or a mile below the lights of Astoria, on the west?

A. Yes.

Q. What time did the "Ocklahama" get up steam and commence to tow you?

A. At 2:30 we were heaving the anchor.

Q. What time did you get under way; get your anchor up?

A. The anchor was up about three o'clock.

Q. What anchor did you have down?

A. The starboard anchor.

Q. You left it swinging at the cat-head?

A. No, we left it hanging from the bow.

Q. After you got under way, about what speed do you think the "Ocklahama" was making with her tow?

A. Five to six knots.

Q. Five to six knots?

A. Yes.

Q. Were you on watch and in charge of the deck, at this time?

A. Yes.

(Testimony of William Eggars.)

Q. Did you have anything to do with the navigation?

A. No.

Q. Why not?

A. Because I got orders from the "Ocklahama" to put my wheel amidships and wait for the orders he gave me.

Q. Who was at the wheel?

A. On our ship?

Q. Yes.

A. The sailor Thygesin.

Q. Did he put the wheel amidships by your order?

A. Yes.

Q. Did you see him do it?

A. Yes.

Q. Where were you at the time you were on watch? What part of the deck?

A. I stood aft on the poop on the starboard side.

Q. Did you walk about?

A. No, I was standing by the rail.

Q. From whom did you get your orders to put the wheel amidships? What man?

A. From Pease.

Q. Roy Pease?

A. Yes.

Q. The pilot of the "Ocklahama"?

A. The pilot of the "Ocklahama."

Q. Where was he at the time?

A. He was in the wheel-house.

(Testimony of William Eggars.)

Q. Of what vessel?

A. Of the "Ocklahama"; stood at the wheel.

Q. Now, just to finish this up, was your wheel altered at all, or was it kept amidships all the time until the collision?

A. It was kept amidships all the time.

Q. You saw that yourself, did you?

A. Oh, yes.

Q. Now, state what you first saw up the river in the way of lights indicating a vessel.

A. I saw a vessel lying on the port side.

Q. That was before daylight and still dark?

A. Yes, it was dark.

Q. You only saw the lights?

A. Yes, two white lights.

Q. How were they in relation to the course of the "Thielbek"?

A. It was clear enough of our course.

Q. On what side?

A. On the port side.

Q. Your port side?

A. Yes, our port side.

Q. About how much clear?

A. About two points.

Q. How close were you to the Astoria dock lights or shore at the time when you first started?

A. I expect about three hundred feet.

Q. That would be your guess, would it?

A. Yes, that is my guess.

Q. Then what next did you see in the way of lights indicating a vessel?

(Testimony of William Eggars.)

A. I saw a light coming up forward, two mast-head lights and a green light.

Q. And what relation were they to your course, which side of it?

A. I just see the green light coming up; she showed just clear from our ship on the starboard side.

Q. (Mr. Bristol) She showed from your ship on the starboard side?

A. Yes.

Q. (Mr. Bristol) Starboard side?

A. Yes, I had been standing on the starboard side high up on the poop.

Q. Over against the rail of your ship?

A. Yes, sir.

Q. (Mr. Bristol) The starboard side of your ship?

A. Yes, sir.

Q. This green light and those two mast lights seemed to be practically just ahead of you?

A. Yes.

Q. Except it was only showing the green light?

A. Yes, it was just clear from our bow.

Q. Didn't see at this time any red light?

A. No.

Q. What lights were you showing, the "Ocklahoma" and "Thielbek," taken as one vessel?

A. We had on the port side a red light and on the starboard a green.

(Testimony of William Eggars.)

Q. Starboard side of what vessel?

A. Of our ship, of the "Thielbek."

Q. The port side of what vessel?

A. The "Ocklahama."

Q. Did the "Thielbek" have any red light herself?

A. No.

Q. What character of light was burning?

A. Electric.

Q. What does the "Thielbek" use?

A. Electric, too.

Q. On the "Thielbek" that night, who put it there?

A. It was the fellow off the steamboat; he brought it over there with a cable.

Q. With an electric cord or line?

A. Yes, sir.

Q. It was brought from the "Ocklahama," was it?

A. Yes, sir.

Q. Now, what illumination do you use on the "Thielbek" generally for your own lights?

A. We always burn kerosene, petroleum.

Q. You use oil?

A. Yes, sir.

Q. You had none of your own lights out?

A. No.

Q. There is a passage in the log which has been read into the record, saying that the side-lights were properly burning according to regulation. I

(Testimony of William Eggars.)

will ask you whether that means the side-lights as you have described them, or did it mean that the "Thielbek" had her own side-lights out?

A. It means the lights were on the place where they belonged, as I have described them.

Q. How far off would you judge the vessel was when you saw the two mast-head lights and the green light?

A. I couldn't say that, how far it was off; I couldn't guess.

Q. These first lights that you saw on the vessel lying at anchor, what lights did they afterwards turn out to be?

A. It was a steamboat.

Q. What was her name, the first one you saw lying at anchor? Don't you know her name?

A. I know the name now, but I didn't know it then.

Q. Do you know it now?

A. Yes, the "Chinook."

Q. Now, then, when you saw this green light on the approaching steamer, what relation was it in line between you and the "Chinook"; what relation to the "Chinook," we will say, on a line drawn from you to the green light?

A. I couldn't see the "Chinook" from the star-board side at all; she was on the port side.

Q. You saw the green light clear of the "Chinook"?

A. Yes.

(Testimony of William Eggars.)

Q. Did you hear any whistle?

A. Yes, sir.

Q. From what vessel?

A. As soon as I seen the green light I heard two whistles blowing from the steamboat ahead.

Q. As soon as you saw the green light?

A. Ten or twenty seconds after.

Q. She blew two whistles?

A. Yes, sir.

Q. Did the "Ocklahama" answer?

A. No.

Q. Then what happened?

A. He rung down to his engine and stopped his engine, the "Ocklahama," but didn't answer the whistle.

Q. Did he stop the engine and back, or just stop it?

A. He stopped it.

Q. Were there any other whistles?

A. No.

Q. Well, I mean afterwards.

A. Afterwards, not longer than three minutes, I heard another two whistles.

Q. From what vessel?

A. From the vessel ahead.

Q. You say three minutes. You don't mean it was as long as three minutes between whistles?

A. It was quite a while.

Q. I am asking you. I don't know a thing about it myself, so don't let me influence you. Did the "Ocklahama" answer that?

(Testimony of William Eggars.)

A. Yes, she answered the two whistles.

Q. Then what was done?

A. At about the same time we came together and he let go his anchor.

Q. What steamboat was that?

A. The "Thode Fagelund," the one ahead.

Q. He let go his anchor?

A. We ran together and he blows four short whistles.

Q. Which happened first, blowing the whistles or running together?

A. At about the same time; after he gave two whistles it was about in ten seconds we came together.

Q. That is not the point. You said, "We ran together and he blew four whistles." Which happened first? Did he blow four whistles and you run together, or did you run together and blow four whistles?

A. We ran together and four whistles came out all about the same time.

Q. Well, then, what did you do?

A. I went forward and Pease asked me if the wheel was amidships, and I took a look and saw that it was and I went forward. I went down in the forepeak and looked to see if she was making water.

Q. How did you find the "Thielbek"; was she making water?

(Testimony of William Eggars.)

A. No, she didn't make any water.

Q. Then what did you do?

A. Then the "Ocklahama" came alongside and asked if the "Thielbek" was making any water, and I answered no, and then he made fast.

Q. Was the "Ocklahama" torn loose from her lines by the collision?

A. Yes.

Q. What lines did she have out on the "Thielbek"? Describe them.

A. She had two stern-lines, a head-line and two breast-lines.

Q. Five altogether?

A. Yes, sir.

Q. Describe what they were in way of their weight and strength; whether hemp or steel or manilla.

A. I don't know what it was.

Q. You don't know what they were composed of?

A. No, only that they were of wire and rope.

Q. Where were they made fast to the "Thielbek"?

A. Two over the stern, made fast on the poop; one aft, just before the poop, amidships, and one goes forward about to the main-mast, and one was over to the mizzen-mast on the rail—on the stanchion.

Q. You say that the danger-whistles and the collision came together?

A. Yes, sir.

(Testimony of William Eggars.)

Q. How long were the danger-whistles and the collision after the second two whistles from the "Fagelund"?

A. A bit over three minutes; three minutes, about.

Q. Is that now from the second two whistles?

A. The second two whistles to the next whistles; ten or twenty seconds after the second whistle we came together.

Q. I think I am confused or you are between which whistles was the interval that you say is three minutes?

A. From the first to the second.

Q. From the first two whistles to the second two whistles?

A. Yes, sir.

Q. Now, then, after the second two whistles it was ten or twenty seconds before you came together?

A. In ten to twenty seconds we came together.

Q. In ten to twenty seconds you came together, and the danger-signal of four whistles was at the same time?

A. Yes, sir.

Q. As the collision?

A. Yes, sir.

Q. When did she let go anchor?

A. All about the same time; she let go her anchor, we came together and the four whistles all at once.

Q. All at the same time?

(Testimony of William Eggars.)

A. Yes, sir, all at the same time.

Q. Now, at the time of the collision, where were you in relation to the "Chinook"; was she on your port?

A. She was on the port side; we was close to the stern of the "Chinook," about 150 feet off.

Q. Was it light enough at this time to see the shore at all, or was it still dark?

A. It wasn't quite dark, but wasn't light; just the time before daylight.

Q. You couldn't see the Astoria shore; only the lights?

A. I could just see it, yes; I could see a man standing on the shore, but couldn't quite make him out.

Q. Could you see it was a man and could you see the figure?

A. No, it was too dark.

Q. Was he holding a light?

A. No, he was singing out to the "Ocklahoma."

Q. Then you really didn't see the man?

A. I couldn't quite make him out, but could see his arms and legs moving there in the dark.

Q. How far were you from the Astoria shore?

A. About 300 to 350 feet.

Q. How was the "Thielbek" lying at this time in the stream; was she across-stream or up and down.

A. Up and down the river.

Q. How was the "Fagelund" lying?

(Testimony of William Eggars.)

A. The "Fagelund" was about in the same position, a little bit more over to the port-side (indicating) ; a little bit over to the Astoria side with her stern.

Q. Now, you said something about seeing the green light on the "Fagelund" and then seeing that shut out and the red light coming into view?

A. Yes, sir.

Q. Did you notice the mast-head lights in this swinging?

A. No, I didn't see the mast-head lights. I saw them as they closed in; came into one line and then the red light came into view.

Q. When you first saw them were the mast-lights in one line?

A. No, they wasn't.

Q. Then, as I understand you, when you first saw them they were somewhat open?

A. Yes.

Q. And then the red light showed?

A. Yes, sir.

Q. About how long before the collision would that be?

A. That they came in one line?

Q. That they came in one line and the red light showed?

A. It was shortly before the collision, about half a minute.

Q. About what speed would you think the "Ocklahama" and her tow were going when they hit the

(Testimony of William Eggars.)

"Fagelund"? That is, let me make that clear. You say that the engine was stopped on the "Ocklahama" at the whistle of the "Fagelund"?

A. Yes, sir.

Q. But she didn't back?

A. I don't know whether she backed or not; I heard her ring as I went forward; I heard two whistles and she rang down.

Q. You don't know the signals?

A. No, I don't.

Q. You know he stopped the engine?

A. Yes.

Q. When they struck, just at the time of the striking, what speed was the "Ocklahama" making with the "Thielbek," would you guess?

A. About two knots.

Q. Then she had slowed down from what you think was six to what you guess to be two—I believe you said six knots?

A. Yes, five to six knots. Yes.

Q. In what distance had she traveled from the time she shut down the engines until you struck?

A. About three minutes.

Q. I mean distance. Just make a guess.

A. I don't know how much.

Q. You have no idea? Can't you give a rough guess of the distance?

A. I can't say.

Q. Did you help the master make out the list of supplies due to the collision?

(Testimony of William Eggars.)

A. Yes, sir.

Q. How did you arrive at that? How did you do it?

A. I just put down the things that were smashed up; the pickled stuff had run out of the barrels and I put it down.

Q. Then the things that were lost were smashed in the collision, were they?

A. Yes, sir; the paint and oil. They were smashed or run out and I gave a list of it to the Captain.

Q. Were these things all a total loss to the ship?

A. Yes.

Q. Then you and the Captain together made up a list of things to duplicate them?

A. Yes, sir.

Q. To replace them?

A. Yes, sir.

Q. Do you, as an expert, know anything about the effect of taking a ship out of water in the heat, and the effect of exposure to the heat on the paint that is on the bottom of the ship?

A. I know the sun was very hot and the paint was all blistered in some places.

Q. Then the cause of the damage was blistering, was it?

A. Yes, the blistering.

CROSS EXAMINATION.

Questions by Mr. Bristol:

Q. Mr. Eggars, did you take any note of the time when you came on deck Sunday morning?

(Testimony of William Eggars.)

A. Yes, I looked at the time.

Q. Where did you get that time? From the ship's clock or your watch?

A. From my own watch.

Q. What time was it?

A. 2:30.

Q. Did you give the order then to weigh anchor?

A. No. The third mate was on deck.

Q. How long does that take? Has the "Thielbek" got a steam winch?

A. Yes, sir.

Q. How long does it take her to weigh her anchor?

A. About half an hour.

Q. How many fathoms of chain did you have out that morning?

A. Thirty-five fathoms.

Q. Then you went across two and a half shackles before you got your anchor up?

A. Yes.

Q. Have you got a brake-winch on your ship so that you can stop the chain when it comes in?

A. Yes.

Q. Who was at that brake?

A. The third mate.

Q. That is Oehring?

A. Yes, sir.

Q. You came on deck at 2:30?

A. Yes.

(Testimony of William Eggars.)

Q. Half an hour to weigh your anchor would make it three o'clock?

A. Yes.

Q. How long did it take the tug-boat to get ready before you commenced to get under way?

A. She made right away a start. I came aft and told him the anchor was up and then he starts and goes ahead.

Q. When you came aft the wheel-house of the "Ocklahama" was on your port quarter and in what position with reference to the place where you stood, right opposite?

A. About square off from me.

Q. Right opposite where you stood?

A. Yes, about; a little bit more ahead of where I stood.

Q. And did you stand at the very edge of the poop-deck?

A. No; on the starboard side of the poop-deck.

Q. And to the forward end of it?

A. Yes.

Q. Right up near the rail?

A. Yes.

Q. Right in the corner between the poop-deck rail and the bulwark-rail on the starboard quarter?

A. Yes.

Q. You took that stand all the time?

A. Yes, sir.

Q. How many feet back of you is it to the wheel of the "Thielbek"?

(Testimony of William Eggars.)

A. About thirty feet.

Q. You have a hand steering-gear on the "Thielbek"?

A. Yes.

Q. Now, then, if I understand, this is your poop-rail and this is your bulwark-rail (indicating with pencils and a knife on table). If I looked athwart your ship, there would be the wheel-house of the "Ocklahama" to my right hand?

A. Yes, sir.

Q. Not more than an eighth of a point ahead of that line?

A. Yes, sir.

Q. And you didn't change from that position all the time to the happening of the accident?

A. No, I always stood there.

Q. All of the things you have told Colonel Wood you saw, all of the lines you saw, and what you heard, were seen and heard by you from that position and no other?

A. Yes, sir.

Q. Is that correct?

A. Yes, that is correct.

Q. Were there any orders given by the Pilot Pease?

A. Just the order to keep the wheel amidships.

Q. Were there no orders given by the pilot to the wheel-man on the "Thielbek" after he told him to keep the wheel amidships?

A. No.

(Testimony of William Eggars.)

Q. At no time prior to the collision?

A. No.

Q. And you swear, do you, that the helm on the "Thielbek" was kept in one position from the time she started until she came into the "Thode Fagelund"?

A. Yes, sir.

Q. Did you take any bearing of your ship at the anchorage she was placed in by the tug "Wallula"?

A. No.

Q. Did you come ashore any time between 1:30 on Saturday and 2:30 Sunday morning?

A. No.

Q. Who was it took the Captain ashore?

A. Wasn't it the pilot?

A. (By the Captain) The private launch.

Q. Came out to get you?

A. (Captain Bergmann) Yes.

Q. Who ran that launch?

A. (Captain Bergmann) I don't know his name.

Q. Where did you get that launch?

A. (Captain Bergmann) If a ship comes in at Astoria the launch comes out to get you.

Q. The regular port launch at Astiria?

A. (Captain Bergmann) Yes.

Q. Did you pay him for his services?

A. (Captain Bergmann) Yes.

Q. Who did you pay?

A. (Captain Bergmann) I haven't paid him yet.

Q. What is his name?

(Testimony of William Eggars.)

A. (Captain Bergmann) I didn't pay it yet; I will pay the whole thing later.

Q. What is the man's name?

A. (Captain Bergmann) Johnson, I think.

Q. That is the fellow who ran the boat and took you back and forth from your ship to the shore?

A. (Captain Bergmann) Yes, sir.

Q. Now, you, Mr. Witness, didn't come ashore at all all the time you were there?

A. No, sir.

Q. Have you been in Astoria ever before?

A. No.

Q. This is your first trip?

A. Yes.

Q. You don't know the dock this man was standing on that you heard calling to the "Ocklahama"?

A. No.

Q. How far was it from the point of the collision, where that man was standing on the dock hailing the "Ocklahama"?

A. 300 to 350 feet.

Q. Was it after the collision this man hailed the "Ocklahama"?

A. Yes.

Q. Close after the collision?

A. Yes, sir.

Q. You say that the "Ocklahama" came up alongside the stem of the "Thielbek" and asked you if she was making any water?

A. Yes.

(Testimony of William Eggars.)

Q. Were you here this morning when your Captain testified and did you hear him state that when the "Ocklahama" ran up alongside of your ship he didn't hear any hailing at all?

A. Yes, that is what he said.

Q. You heard him say that?

A. Yes.

Q. He said, also, that you and he were standing on the fore-castle-deck together?

A. I was standing there first and then I went down in the hold.

Q. Where had the "Ocklahama" been when she asked you that question? Was she then backing up or going ahead?

A. No, she was square off from our fore-mast.

Q. Where was her wheel-house with respect to the "Thode Fagelund"?

A. The "Thode Fagelund" was more ahead.

Q. Up alongside the "Thode Fagelund"?

A. No.

Q. Where was the wheel-house of the "Ocklahama"?

A. Square out from me; I stood by the fore-mast.

Q. Do I understand you to mean that the "Ocklahama" was opposite the fore-mast with her stern, or was she opposite the fore-mast with her wheel-house?

A. We lay this way (indicating on table with pencils) and she lay this way. Here is our fore-

(Testimony of William Eggars.)

mast and here is the forecastle-head. Here is the "Ocklahama." (Witness points to a line at right angles.)

Q. What part of the "Ocklahama" came up to and beside or abreast of the forecastle-head of the "Thielbek"?

A. I don't know that. When I came out of the hold I saw her here (indicating).

Q. What part did you see of the "Ocklahama" opposite your forecastle-head?

A. Then she was here, more back.

Q. What part of her more back?

A. About amidships of our ship then.

Q. Where was her bow?

A. There was her bow, amidships of our ship.

Q. Then she didn't come up to your forecastle-head?

A. No, not to the forecastle-head at all.

Q. How far did she go back?

A. I couldn't tell you how far.

Q. Your ship is only 358 feet long?

A. Three hundred.

Q. The "Ocklahama" is how long; about half that length, isn't she?

A. Yes, half that length about.

Q. Let's find out about this. Illustrating with the blue pencil to represent the "Thielbek," for illustration, the blue pencil being about eight inches long, and the red pencil to represent the "Ocklahama"—No, we will use the pearl-handled pen-knife about

(Testimony of William Eggars.)

three inches long to represent the "Ocklahama"—when you originally started from your anchorage the "Ocklahama" lay in respect to your ship as I have laid the blue lead-pencil on the table and the pearl-handled pen-knife alongside, did it not? (Indicating.)

A. Yes, sir.

Q. When you went down in this fore-peak to see whether you were making water, did you do that before or after the pilot on the "Ocklahama" asked you if she was making any water?

A. Before. As soon as the collision came I went down to see.

Q. When you came back up, I want you to move this knife along and show me where the "Ocklahama" was and her position?

(Witness does so.)

Q. She was lying at right-angles to your vessel?

A. Yes, sir.

Q. Was her bow about even with your fore-mast, or was her stern that way?

A. A little bit more this way. (Indicating.)

Q. Is this the bow, pointing towards your fore-mast, or is this the stern?

A. The stern. The "Ocklahama" lay like this (indicating). Here is our fore-mast here (indicating).

Q. She was pointing her bow in here? (Indicating.)

A. No; she was away off.

(Testimony of William Eggars.)

Q. How far between your ship and her bow?

A. 100 or 150 feet.

Q. Her bow was away off from you when he hailed you?

A. Yes, when he sang out.

Q. He sang out from the pilot-house to you?

A. Yes, sir.

Q. Then did he turn his ship this way, or back up and make fast again?

A. I couldn't say because I went up on the high deck to the water-tank.

Q. You didn't take much note of how he moved, whether stern foremost, or bow foremost, to get back here to fasten to you?

A. I couldn't say because I went up to the high deck and then went down aft.

Q. When he hailed you there and you saw the "Ocklahama" with her bow about 100 feet distant from you and her stern out in the stream, how far away, illustrating with this blue pencil, was the stern of the dredge "Chinook"? How many feet?

A. She lay about here. (Indicating.)

Q. So that was about the same distance between his bow and your 'midships as there was between the bows of you two vessels hung together and the stern of the dredge?

A. Yes, sir.

Q. Now, did anybody on your ship cast loose the tow-lines?

A. I don't know; I didn't ask.

(Testimony of William Eggars.)

Q. You didn't direct or give any order to cast loose the tow-lines?

A. No.

Q. Was there any remnant or pieces of the wire pennants left on your ship?

A. They were lying on the poop and we gave them back to the "Ocklahama."

Q. Who did you give them to on the "Ocklahama"?

A. I don't know.

Q. Was it to Pease?

A. No, none of those fellows; one of the sailors there.

Q. How long after the collision was it you gave those ropes back?

A. Within an hour, about.

Q. Did they seem anxious to get those ropes?

A. No.

Q. Why did they want them?

A. We wouldn't have them any more.

Q. Was it the wire part of the ropes that were broken?

A. No, the rope was broken.

Q. The rope part?

A. The rope in the wire.

Q. You mean in the splice?

A. No, in the eye of the splice.

Q. That had pulled entirely apart, was that it, this eye? How was it broken? Simply pulled the eye out or broke?

(Testimony of William Eggars.)

A. The rope was broken.

Q. How big a hawser was that; a three-inch hawser?

A. About four-and-a-half inch hawser.

Q. Now, when you stood here on this rail on your starboard side, looking ahead and watching your ship, where you were going, I understood you to tell Colonel Wood that you saw the green light of this steamer which you afterwards found to be the "Thode Fagelund," clear of the dredge?

A. Yes, sir.

Q. Do you know anything about the movements of the "Thode Fagelund," as to what her engines were doing or what she was doing?

A. No, no; I didn't think of it at all. I didn't take that into consideration. I didn't think there would be any collision at all. We were going to the port, I saw her green light and I thought it would be all right.

Q. In other words, so far as you could see from where you were, as a navigator, there was plenty of room for you to have negotiated a passage on either side, wasn't there, and get through?

A. There wasn't much room, but room enough for passing.

Q. If you had been a close navigator you could have gone through on either side?

A. Yes.

Q. That was true during all the time you came

(Testimony of William Eggars.)

up the river after she got clear of the dredge, wasn't it?

A. Yes, sir.

Q. This man you heard calling to the "Ocklahama," I would like to fix, if possible, as near as I can, where it was on the dock. This blue pencil being the dredge and this the "Ocklahama" and this other pencil where you put your ship and the red one the "Thode" there, and the edge of the table the dock (indicating); whereabouts was this fellow calling? Down here or up here (indicating)?

A. Down here. (Indicating.)

Q. About abreast of the 'midship-section of your poop? About abreast of where you stood on your ship during the navigation?

A. No, not at that time. After the collision he stood there and gave a call. I heard him singing out and went on the poop and asked him what he wanted.

Q. In calling that way in the morning a seafaring man gets a pretty good idea of distance by the sound of the voice?

A. Yes.

Q. How far was that man off, do you think?

A. I think about 300 to 350 feet.

Questions by Mr. Minor:

Q. Mr. Eggars, how was the "Thielbek" swinging before the collision?

A. She was going easy to the port.

Q. How long had she been going in that course?

(Testimony of William Eggars.)

A. She was going that way a short time before we heard the two whistles of the steamboat, easy to the port.

Q. Did she change her course after the whistle?

A. Yes, she was going more to the port after we heard the two whistles.

Q. After she took that new course, did she change the course at all?

A. Yes, he changed the course and let her go easy as far as she could go and then held her up a bit.

Q. Before the two whistles blew, how was the "Thielbek" swinging?

A. Easy to the port.

Q. Was the "Fagelund" swinging at all when you first saw her?

A. Her lights were showing clear out and her green light, as I told you before, was clear out too.

Q. The lights. What lights?

A. The mast-head lights.

Q. The side-lights showed clear at the time and the green light was showing?

A. Yes.

Q. Could you tell from the mast-head lights whether the "Fagelund" was swinging at all or not?

A. I don't know.

Q. When you first saw her?

A. When I see her I saw the green light and one mast-light and then the other shone a little bit more clear out.

(Testimony of William Eggars.)

Q. How was she pointing toward your course?
How many points off?

A. About a point from our course; a point or a point and a half.

Q. Suppose the "Fagelund" had continued on the course as you first saw her and your vessel and the "Ocklahama" had continued on the course you were on, would not the two vessels have come together?

A. I don't understand.

Q. Before you saw the "Fagelund" you were swinging easy to port?

A. Yes.

Q. When you saw the "Fagelund" she was going with her mast-lights open so that you could see her rear mast-light and her front mast-light?

A. Yes, sir.

Q. And the opening between those two lights showed you, as I understand, that the "Fagelund" was at an angle from your course somewhat to port?

A. Yes.

Q. Suppose she had continued in the course she was pursuing at that time and you had continued in the course you were pursuing, would the two vessels ever have run together?

A. No.

Q. Did you change your course after that more to starboard?

A. No.

(Testimony of William Eggars.)

Q. She changed, as I understand, to starboard after that?

A. Yes, she changed to starboard, because her red light came out.

Q. You say the paint was blistered when they took the ship up. Do you mean it was blistered when they took her from the water, or afterwards?

A. It was blistered aft, amidships.

Q. How great a space was the paint blistered?

A. Small ones and big ones.

Q. How much of her bottom was blistered?

A. Some spots where the sun had burnt.

Q. How big were those spots, how many of them and how far apart?

A. I saw them on many places, five or six places.

Q. How big were those spots?

A. Some big and some small ones.

Q. Give me an idea how big?

A. Half the size of this room.

Q. Half as big as this room, about 14x20?

A. Something like that.

Q. She was blistered on both sides or one side?

A. One side, the starboard-side, the most.

Q. On both sides?

A. Yes, on both sides, on the port side not so much.

Q. She was blistered on both sides?

A. Yes.

Q. Blistered on the bottom?

(Testimony of William Eggars.)

A. Not underneath, more on the top part.

Q. Was she blistered at all from the ordinary water-line down?

A. Yes.

Q. About how much of her entire length did you find the blisters on?

A. About 'midships and three or four spots further amidships and aft and two spots forward.

Q. Where is this dry-dock you put her in?

A. The Oregon Dry-Dock.

Q. (Mr. Bristol) The Willamette Iron & Steel Works. Which side of the river?

A. On the other side.

Q. (Mr. Bristol) The right bank of the river coming up?

A. Yes, sir.

Q. How does this dry-dock lie with the channel of the river, parallel with the channel of the river or at right-angles with the channel of the river?

A. Cross-ways of the river.

Q. And the blistering, as I understand it, was on both sides of the vessel?

A. Yes.

Q. Which side was the most blistered?

A. On the starboard side the most.

Q. Blistered more aft or forward?

A. More aft.

Q. Was the paint blistered when you put her on the dry-dock?

(Testimony of William Eggars.)

A. No, they scraped it all off and made it even.

Q. Scraped it off and made it even?

A. Yes.

Q. You didn't blister it in scraping it off?

A. I don't understand you.

Q. You didn't rub the paint off in scraping it?

A. No.

Q. Who counted the provisions lost?

A. I counted them.

Q. How did you count them?

A. I counted the beef-barrels; I hauled them on deck and showed them so the surveyor could see them, the blocks and everything that was broken.

Q. I understood you had an inventory and counted by the inventory. How is that? Did you count by the inventory or just count what you saw?

A. Just what I saw, you know.

Q. How much did you see? How many barrels of pork did you see?

A. Four.

Q. Were they full?

A. Yes.

Q. Hadn't been used at all?

A. Hadn't been used at all. The meat had been lying in the fore-peak.

Q. How many barrels of beef?

A. Four.

Q. Hadn't been used at all?

A. No.

(Testimony of William Eggars.)

Q. Where were these blocks that had been damaged?

A. Some of the blocks were not there and some of the broken ones we brought on deck.

Q. How do you know the ones that were lost were there before the collision?

A. I had been hunting them up and had them all in the book.

Q. You knew they weren't all there?

A. Yes, sir.

Q. How did you know about this paint?

A. The paint was laying over the whole ship.

Q. How far was the paint from where it was when the collision took place?

A. It was broken and going down into the hatch.

Q. Where was the white lead?

A. It stands forward.

Q. What became of the paint and white lead when the collision took place?

A. It lay right forward in the fore-peak before.

Q. What became of it after the collision? What became of that paint and white lead after the collision?

A. It leaked forward into the fore-peak.

Q. What became of that paint and white lead after the collision?

A. You couldn't do anything more with it. It was all down in the coal-bin; about twenty tons of coal lay in there.

(Testimony of William Eggars.)

Q. It didn't go overboard?

A. No.

Q. These barrels didn't go overboard?

A. No.

Q. The meat was left in the barrels?

A. Yes, it lay over the fore-peak.

Q. That was worthless too?

A. Yes.

Q. Couldn't do anything with it? What did you do with it?

A. We couldn't do anything with it; we didn't have any pickle to put it in.

Q. What did you do with it?

A. We hauled it on deck and the Captain said to put it in the bottom and let it stand there and a couple of fellows came from Portland and had a look at it.

Q. What did you do with it?

A. It's still there.

Q. It is there yet?

A. Yes.

Q. Couldn't you put it in brine or pickle again?

A. We haven't got any pickle; we are going to try to do it; brush it off and clean it.

Q. Why didn't you do it before?

A. We cleaned it off right away.

Q. But you haven't pickled it yet or put it in brine?

A. No, it is standing there.

(Testimony of William Eggars.)

Mr. WOOD: Aren't you satisfied with the pickle you've got us into, Mr. Minor?

Q. How did you ascertain how much was spoiled of the pork?

A. I don't know.

Q. How did you ascertain how much beef there was?

A. I don't know; one barrel had about 300 pounds.

Q. The broken barrel had how much?

A. 200 or 220.

Q. You haven't sold that pork or beef?

A. No.

Q. Have you tried to?

A. No.

QUESTIONS BY MR. BRISTOL:

Q. Mr. Minor got you to say something about when you saw the two mast-lights of the "Thode" open up and also saw the green light that she would be on a certain course with reference to your course. Now, in order to get at exactly what you mean, I wish you would look at this paper having on it the word "Eggars" in red with a cross underneath it and a diagram of a vessel in red design to represent the "Thielbek" and a lead-pencil diagram attached to her port-quarter representing the "Ocklahama," and a cross on the "Thielbek" at the corner of the bulwark-rail and poop-rail representing where you stood—

A. Yes.

(Testimony of William Eggars.)

Q. Is that correct?

A. Yes.

Q. Will you take the red pencil and mark on here, this being the direction your ship is pointing, will you mark on there some place the way that you first saw the "Thode."

(Witness does so.)

Q. The witness draws a picture in red on the plat and I ask him to initial it with his initials just to tell afterwards, "W. Eggars," and at the place where he puts his initials I ask him if that represents the position of the "Thode" at the time you mentioned in your testimony?

A. Yes, sir.

Mr. BRISTOL: I offer this in evidence as explanatory of the witness' testimony in that regard. (Marked "Thode Fagelund, Exhibit A.")

QUESTIONS BY MR. WOOD:

Q. Mr. Eggars, Mr. Minor asked you a question about the "Thielbek" and the "Ocklahama" being on an easy port-swing. Do I understand that was all the way coming up the river, or only at the time of the first whistle of the "Fagelund"? In other words, when did you take the port-swing?

A. We took the port-swing shortly before the two whistles came.

Q. Before the two whistles?

A. Before the two whistles we were going easy to the port; after the two whistles we were going more.

(Testimony of William Eggars.)

Q. Going more to the port after the first two whistles of the "Fagelund"?

A. Yes, sir.

Q. Then did he make any further change to port?

A. Yes, she was going easy all the time the whole way along.

Q. I understand that he was first going easy to port; then after the two whistles he made a further change to port. Now, did he make another change, or was that all?

A. No, he didn't make any further change only going a bit quicker; he was going easy to the port still, but going a bit further.

Q. (Mr. Bristol) In other words, her head moved up quickly?

A. Yes, sir.

Q. Now, from what you saw from your position there before the collision, how was the "Ocklahoma" and the "Thielbek" swinging on a course with reference to the position of the "Chinook"?

A. She was swinging close to the stern of the "Chinook," going pretty close to the "Chinook." Then I see she goes a bit further; I could see the lights.

Q. In your opinion, could she have safely got closer to the "Chinook"?

A. I don't think she could have got any closer.

Q. How long had she been swinging to port before the collision?

(Testimony of William Eggars.)

A. Maybe half a minute before the collision, about four or three and a half minutes.

Q. I mean from the time she first commenced to swing to port, how long before the collision after she commenced the easy swing to port? How long on that easy swing before the collision?

A. She was swinging until she answered his two whistles; then she swung some more.

Q. Have you any idea about what length of time that would be?

A. No.

Mr. BRISTOL: I call the attention of the proctor of the "Thielbek" to the chart introduced in evidence, L. C. R. 186, Libelants' Exhibit 5, and point out to him that it is a self-evident physical fact from the position of the two ships that there would have to be a change of course frequently and a port-bearing would necessarily follow in order to round Smith's Point.

Q. As far as you know anything about it, the "Ocklahama" was coming up the river on an even helm, or 'midships helm, practically keeping a straight course until just about the time of the first whistles, and then commenced her swing to port. Or was she swinging to port a little all the way up until she rounded Smith's Point?

A. She was always making her course a bit to the port; she swings always easy to the port. After the whistles she swings harder than before.

(Testimony of William Eggars.)

Q. In your opinion, could she have swung any more without danger of collision with the "Chinook"?

A. She couldn't swing any more because if she would swing any more she would go into the "Chinook."

Q. Now, I was talking with the Captain and he thinks that when you place the "Ocklahama" after the collision 150 feet off the "Thielbek," that you got that distance too far. What do you think? Take a second thought on it.

A. I was standing by the rail. I said it was about a hundred feet off from our ship.

Q. Captain Bergmann, what is your idea of the distance that the "Ocklahama" was off the "Thielbek"?

A. (Captain Bergmann) I said forty to fifty feet.

Q. (Mr. Bristol) Where were you at the time you observed that distance?

A. (Captain Bergmann) I was on the fore-castle-head.

Q. (Mr. Bristol) The same place this witness was at?

A. (Captain Bergmann) Yes, about the same; he was below.

Q. (Mr. Bristol) Now, he is talking about where she was after he came up from being down in the fore-peak and you are talking about what you saw when he was down in the fore-peak?

(Testimony of William Eggars.)

A. (Captain Bergmann) Yes.

Q. (Mr. Bristol) Now, then, a considerable time elapsed to let him go down into the fore-peak and come up and answer the tug's hail?

A. (Captain Bergmann) Yes.

Q. (Mr. Bristol) You can't go down there in a second, can you?

A. Yes.

Q. (Mr. Bristol) How many decks have you got to go down?

A. (Captain Bergmann) Two.

Q. (Mr. Bristol) You have to go down there on a ladder, don't you?

A. (Captain Bergmann) On the ladder; yes.

Q. (Mr. Bristol) And take a light with him too?

A. (Captain Bergmann) I don't know.

A. (Witness Eggars) Yes, I took a lamp.

Q. (Mr. Bristol) Where did you get the lamp?

A. It is always down there.

Q. (Mr. Bristol) Is it always lit?

A. No.

Q. (Mr. Bristol) He had to stop and light the lamp, didn't he?

A. (Captain Bergmann) Yes.

Q. (Mr. Bristol) Now, then, all this time this tug is moving. When you saw her 50 feet off he goes down, lights the lamp, goes and examines for water, comes up and answers the tug's hail. How far off was she then?

(Testimony of William Eggars.)

A. (Captain Bergmann) I don't remember.

A. (Witness Eggars) The "Ocklahama" was 150 feet off.

Q. (Mr. Bristol) I am trying to get at the difference between the commanding officer and the first mate on a matter so particularly important as the distance of the tug. Why should your first mate estimate that distance incorrectly? The steamer "Thielbek" was lying here (indicating). The mate says the "Ocklahama" was lying this way (indicating). Isn't that true?

A. (Captain Bergmann) No, I saw it more like this way (indicating).

Q. I see what you are complaining about. It isn't so much the distance as it is you don't want the tug to occupy a position head-on to your vessel. That's it, isn't it?

A. (Captain Bergmann) Yes.

Q. (Mr. Bristol) Now, then, if we get the "Ocklahama" lying off and more broadside to your vessel, how far was her stern away from your vessel?

A. It was a little bit more.

Q. How much more?

A. I would say twenty feet.

Q. (Mr. Bristol) Twenty feet more?

A. (Capt. Bergmann) Twenty feet.

Q. (Mr. Bristol) How far was her stern off your vessel?

A. (Capt. Bergmann) 60 or 70 feet.

(Testimony of William Eggars.)

Q. And her bow 30 or 40 feet?

A. (Capt. Bergmann) 40 feet.

Q. (Mr. Bristol) Do you know of any reason that your first mate would have of placing that distance any greater?

A. (Capt. Bergmann) He means from the stern to my ship.

Q. (Mr. Bristol) He means from the bow to your ship; that is what he testified to. Do you know of any reason your mate has for making that distance any greater than he observed it?

A. (Capt. Bergmann) I don't know.

Q. (Mr. Bristol) State whether you know or not. How long has he been first mate with you?

A. (Capt. Bergmann) Twelve months.

Q. (Mr. Bristol) Always gotten along well together?

A. (Capt. Bergmann) Oh, yes.

Q. (Mr. Bristol) He is German?

A. (Capt. Bergmann) He is German.

Q. (Mr. Bristol) And you are German?

A. (Capt. Bergmann) Yes.

Q. (Mr. Bristol) Both work for Knohr & Burchard?

A. (Capt. Bergmann) Yes, sir.

Q. (Mr. Bristol) Ever have any differences?

A. (Capt. Bergmann) Oh, sometimes; not always.

Q. (Mr. Bristol) Why is it that you want to get that tug closer to the ship than he does?

(Testimony of William Eggars.)

A. (Capt. Bergmann) Only the stern; he said the stern.

Q. (Mr. Bristol) He didn't say the stern; he said the bow; that the bow was about 100 feet off your ship. Why do you want him to get that distance closer?

A. (Capt. Bergmann) He says that the bow of the "Ocklahama" is one hundred feet from our ship? I think he is mistaken.

Q. (Mr. Bristol) Why do you argue the case? That is the reason; you want him to put it a little bit less; you think he is getting you too close to the "Chinook." Now, he is testifying to the fact and you are testifying as to what you want the fact to be, isn't that it?

A. Yes.

QUESTIONS BY MR. WOOD:

Q. I don't think the Captain understands you. You are testifying, Captain, as to what you understand the fact to be?

A. (Capt. Bergmann) Yes, sir.

Q. You are testifying as to what you remember the facts to be?

A. (Capt. Bergmann) Yes, what I saw.

Q. And you think the mate has testified honestly the way he thinks he saw it?

A. (Capt. Bergmann) Yes.

Q. You think the mate is as honest as you are about it?

A. (Capt. Bergmann) Yes.

(Testimony of William Eggars.)

Q. You are not trying to twist the facts?

A. (Capt. Bergmann) No; oh, no.

Q. Mr. Eggars, the collision broke loose all the lines of the "Ocklahama," didn't it?

A. Yes.

Q. So she was perfectly clear of the "Thielbek"?

A. Yes, she was clear from our ship.

Q. How far did she run up on the "Thielbek"?

A. I didn't see that as I was running forward.

(Witness excused.)

HERMAN OEHRING, called as a witness for the libelants, being duly sworn, testified as follows:

Questions by Mr. Wood:

Q. What is your position on the "Thielbek"?

A. Third Mate.

Q. How long have you followed the sea?

A. Nine years.

Q. How long with the "Thielbek"?

A. One year.

Q. How long have you been acting as an officer?

A. One year.

Q. Were you on the watch that was on deck at the time the "Ocklahama" made fast to the "Thielbek"?

A. Yes, sir.

Q. Where was that in the Columbia River, as near as you can place it?

A. Well, I took the bearings of a point on the bridge and a point on the shore. I didn't have any chart, so I couldn't make out the distance we were;

(Testimony of Herman Oehring.)

I just took that to see whether the ship was drifting or not.

Q. How would you say, from what you have since discovered of the chart and of the land, how would you say you were anchored?

A. The point farthest out on the land and the bridge; this is the land and this the bridge (indicating); here is the point of land and here the bridge. The ship was lying about here (indicating), about seven points.

Q. Seven points off what?

Q. (Mr. Bristol) Seven points between the two to the position of your ship?

A. Yes, sir.

Q. Look at this chart, Libelants' Exhibit 5. Here is the draw-bridge. Is that what you call the bridge?

A. Yes, sir.

Q. That is the draw-bridge down there; that point there would be Smith's Point. Now, then, where would you place the location of your ship in relation to those two points?

A. About here (indicating).

Q. At the east point marked on this Exhibit 5, "Oe." Now, I call your attention to the fact that according to this chart you are at that point in an insufficient depth of water. You were drawing about thirteen feet. You might have been farther out?

A. Oh, yes.

(Testimony of Herman Oehring.)

Q. You are not intending to make it exact?

A. No, sir.

Q. The "Ocklahama" made fast to the "Thielbek" and took charge of her at that time, did she?

A. She only made fast; we were lying at anchor then.

Q. When did you get under way? Were you on deck then?

A. Yes, sir.

Q. When did you get under way?

A. We called the Mate about twenty minutes past two.

Q. On the morning of August 24th?

A. Yes, sir.

Q. When you got in motion,—under way—not when you weighed the anchor?

A. When we got in motion it was about three o'clock or a little before.

Q. And at what speed did you proceed up the river, as near as you can guess?

A. I noticed the lights ashore and think we were making about five to six knots.

Q. About how far off the Oregon—Astoria shore were you?

A. We were close to the Astoria shore.

Q. How long did you keep close to the shore, how long on your course?

A. We kept quite awhile close to the shore.

Q. What caused you to swing out from it, do you know?

(Testimony of Herman Oehring.)

A. I don't know.

Q. When did you first see any lights indicating vessels ahead?

A. I was on the forecastle-head and looked out.

Q. How long after you had been in motion, going?

A. About fifteen to twenty minutes.

Q. In what relation were you at that time to any point on the Astoria shore? Have you got any point you could say you were opposite?

A. A little time before I went on the forecastle-head we passed a red light ashore. I noticed that.

Q. That was a little time after you came on the forecastle-head?

A. While I was going up to the forecastle-head I noticed it.

Q. When did you go on the forecastle-head? How long had you been running before you went there?

A. Fifteen to twenty minutes.

Q. What lights did you see ahead?

A. I see a ship lying at anchor; the anchor-lights on the ship.

Q. Where were you?

A. On the forecastle-head then.

Q. Did you place a lookout?

A. Yes.

Q. Who did you place?

A. Gerdes.

(Testimony of Herman Oehring.)

Q. You saw these lights were the lights of a vessel at anchor?

A. Yes, sir.

Q. What did it afterwards turn out these lights were on?

A. The dredge "Chinook."

Q. How was your course at this time in relation to the dredge "Chinook"?

A. Clear.

Q. Clear on which side?

A. The "Chinook" was on our port side.

Q. Then what other lights did you see next?

A. Well, then I see the red and green lights; the mast-head lights and the red and green lights of this steamer after the two blasts on the "Ocklahama."

Q. After the two blasts?

A. Yes, sir.

Q. Didn't see them before that?

A. No, sir, because I went from the forecastle-head aft again.

Q. How long after you saw the red and green lights and heard the two blasts of the vessel before the collision?

A. A minute or two.

Q. Did the "Ocklahama" answer the two blasts?

A. Yes, she answered.

Q. With what?

A. With her steam-whistle, two blasts.

(Testimony of Herman Oehring.)

Q. She had charge of the navigation at this time, the "Ocklahama"?

A. I don't know; I hadn't been out on the poop since we started.

Q. You don't know who was giving the orders?

A. No, I don't know.

Q. What light did you see besides the green light at the time of the two blasts of the whistle?

A. The mast-head lights and shortly after the red light came in sight.

Q. As I understand it, you didn't see anything at the time of the first two whistles?

A. No.

Q. We are talking about the last two whistles which the "Ocklahama" answered?

A. Yes.

Q. How long after the red light came in sight before the collision?

A. Only a very short time.

Q. Can't you give a guess?

A. Well, a few seconds, about ten or twenty seconds.

Q. How about the time in connection with the danger-signals? Did you hear them?

A. Yes.

Q. How long were they before the collision, or with what relation to the collision?

A. The collision and the danger-signals were all at once.

(Testimony of Herman Oehring.)

Q. Did you hear the "Fagelund" let go her anchor?

A. Yes.

Q. How was that in relation to the collision as to time?

A. They were paying the chain out while the two vessels struck.

Q. Did you go up and see the collision?

A. Yes, sir.

Mr. WOOD: I suppose it is sufficiently admitted that the "Thielbek" hit the "Fagelund" on her port bow?

Mr. BRISTOL: There is no dispute about that.

Q. What was done after the collision by those on board the "Thielbek"?

A. They sent some of the men aft to make the tug fast again.

Q. Where was the "Ocklahama" at this time? Had she torn loose?

A. Yes.

Q. Where was she lying in relation to the "Thielbek"?

A. About amidships.

Q. How far away?

A. I couldn't say the distance, but it wasn't much.

Q. About how far?

A. Forty or fifty feet.

Q. How was she angling with the "Thielbek"?

(Testimony of Herman Oehring.)

Q. She was laying the same way as the "Thielbek," only a little bit off, like this (indicating).

Q. Pretty nearly parallel to the "Thielbek"?

A. Yes, sir.

Q. And off amidships of the "Thielbek," did you say?

A. Yes, about 'midships.

Q. How far off the "Thielbek" was the "Chinook"?

A. About 150 to 200 feet.

Q. In what relation in the way of points or direction from the "Thielbek"? This is the "Thielbek" and this the "Fagelund" (indicating). Now indicate there.

A. Well, our fore^{*}castle-head was about abreast of the stern of the "Chinook."

Q. And 150 to 200 feet away?

A. Yes.

Q. How far off do you think the Oregon shore was, the Astoria docks opposite to you, abreast of you?

A. Seven to eight hundred feet, I think.

Q. Did you hear that man calling?

A. Yes.

Q. Now, did you hear anybody from the "Ocklahoma" asking any questions either of the "Thielbek" or of the "Fagelund"? Did you hear any conversation?

A. No, only after the collision when the tug was

(Testimony of Herman Oehring.)

made fast again the watchman came on board on the forecastle-deck.

Q. What did you do immediately after the collision?

A. I was sent on board the "Thode Fagelund."

CROSS-EXAMINATION.

Questions by Mr. Bristol:

Q. Mr. Oehring, where were you on the "Thielbek" at the very instant of collision?

A. I was on the main top deck.

Q. About the waist of your ship?

A. Yes.

Q. And which way were you facing?

A. I was facing forward.

Q. Towards the bow of your ship?

A. Yes.

Q. How long did you remain in that position?

A. Well, after the collision I ran up forward.

Q. How long were you there?

A. Oh, I was forward quite a while.

Q. Say ten minutes?

A. Longer than that.

Q. During that time you were pretty well entertained in trying to see what had happened, weren't you?

A. Yes, at that time I went over to the "Fagelund."

Q. You climbed over the bow and went on the "Fagelund"?

A. Yes.

(Testimony of Herman Oehring.)

Q. Really what you were doing was trying to find out the extent of the injuries that had been inflicted on the two vessels?

A. No, I was trying to find out the name of that ship; those were my orders.

Q. That was your orders? Then you climbed back?

A. Yes, sir.

Q. All of this operation took you how long, ten to fifteen minutes after the collision?

A. Yes.

Q. And it was after that you noticed the position of the "Ocklahama"?

A. No, before that.

Q. Before you went up to the bow?

A. No, not before I went up, but I noticed it from the bow.

Q. And when you were on the bow of your ship you fix the position of the "Ocklahama" as lying broadside of your vessel?

A. Yes, sir.

Q. And about how many feet off?

A. Forty to fifty feet.

Q. And at no time did she lay head-on, as Eggars has described it?

A. I don't know that.

Q. Will you swear she didn't lay head-on to the "Thielbek"?

A. I won't swear it, but I didn't notice it. I don't know it.

(Testimony of Herman Oehring.)

Q. What I am trying to get at is that I am trying to reconcile all this testimony about the position of that tug after the collision. You know what I mean?

A. Yes, sir.

Q. The Captain says one thing, the First Mate says another, and you say another. Now, when the ropes broke and you were going at a speed of six knots an hour, or whatever it was, any old time,—down to two knots, if she was going at speed enough to break the hawser, the minute the hawser parted she would naturally go up to the bow of your ship, wouldn't she?

A. Yes.

Q. You don't know when it was that Eggars saw her?

A. No.

Q. Did you go up on the fore-castle-head after Eggars had examined the fore-peak?

A. No.

Q. Where was Eggars when you were on the fore-castle-head?

A. Coming from the stern of the ship.

Q. He had been down in the fore-castle-head on the ladder, examined her for water and came up and noticed the position of the "Ocklahama" and then ordered you to find out the name of the ship?

A. When he was below I had been going on to the "Fagelund."

Q. Who told you to go on the "Fagelund"?

(Testimony of Herman Oehring.)

A. The Captain.

Q. You didn't notice the position of the "Ocklahama" until you came back from the "Fagelund"?

A. No.

Q. You were gone about ten or fifteen minutes?

A. Yes.

Q. That is all.

MR. WOOD: I want to ask one or two questions before you examine.

QUESTIONS BY MR. WOOD:

Q. Did I ask you, or do you know, at about what speed you were making up the river?

A. Yes, about five to six knots; close to that.

Q. Do you know when you commenced to swing to port?

A. No, I don't know.

Q. Do you know whether the "Ocklahama" set her wheel at all?

A. No, I couldn't say that.

Q. Do you know anything about the lights that were being carried as side-lights on the "Ocklahama"?

A. No, I don't know that, but the watchman and I fixed the side-light on the "Thielbek."

Q. What lights were they?

A. The green light with an electric-cable from the "Ocklahama."

Q. The watchman of the "Ocklahama."

A. Yes, the night-watchman.

(Testimony of Herman Oehring.)

Q. Did the "Thielbek" have any red light of her own?

A. No.

Q. You use oil lights?

A. Yes.

Q. They weren't lighted?

A. No; they were lighted later on.

Q. When?

A. After the collision happened.

Q. You have made an estimate of the distance between the colliding vessels and the shore. How do you arrive at your estimate?

A. The "Thielbek" was swinging around stern to the shore when the two vessels were working to get free from one another and so I noticed it was a good ship's length between the shore and the stern of our ship, so I thought that would be about 300 feet and another ship's length another 300 feet.

Q. Two ships' lengths between your stern and the shore?

A. Yes, sir.

Q. I think Mr. Bristol was examining you—you don't know how far up after the collision the "Ocklahama" ran by her impetus?

A. I only know just opposite; she broke her cables about 'midships.

Q. How long after the collision?

A. A few seconds afterwards. It took me a few minutes to run to the fore-castle-head and when I

(Testimony of Herman Oehring.)

got on the forecastle-head I noticed the "Ocklahama."

Q. What speed would you estimate you were going when you struck?

A. That is hard to say.

Q. Did you slow down any?

A. Well, by the lights ashore she must have.

Q. You didn't know anything about any orders given?

A. No, sir.

Q. Did you see just before the collision how your course would be in relation to clearing the "Chinook"?

A. Yes, the lights of the "Chinook" were just a little bit on our port bow, I think, then.

Q. Anything to spare?

A. I don't think there was anything.

Q. (Mr. Bristol) When you first saw the lights?

A. No, when I first saw them they were good and clear on the port side.

CROSS-EXAMINATION.

By Mr. Bristol:

Q. Colonel Wood asked about these lights. I want to know something about these lights too. Did the "Ocklahama" have her starboard red-light burning?

A. I don't know that; after the collision she had; while we were towing I don't know.

Q. When did you first see the red light of the "Ocklahama"? Didn't you see the red light of the

(Testimony of Herman Oehring.)

"Ocklahama" when she came up alongside of you there?

A. When I was on the fore-castle-head.

Q. Mr. Eggars, when you saw the red starboard-light of the "Ocklahama"—didn't she have it burning?

A. (Mr. Eggars) Yes.

Q. She had it burning?

A. (Mr. Eggars) Yes.

Q. I mean the red port light?

A. (Mr. Eggars) She had it burning.

Q. And she had her green light burning too, didn't she?

A. (Mr. Eggars) Yes, sir, the green light was burning.

Mr. WOOD: Which vessel is this?

Mr. BRISTOL: The "Ocklahama."

Mr. WOOD: What time does that relate to?

Mr. BRISTOL: After the collision.

QUESTIONS BY MR. MINOR:

Q. I don't understand these lights. When you made fast to the "Ocklahama"—

A. About eleven o'clock.

Q. (Continued) Her starboard-side was next to your ship. Was her green light burning?

A. Yes, sir.

Q. Her green light was burning too?

A. Yes, when she made fast.

Q. After she made fast was her green light burning?

(Testimony of Herman Oehring.)

A. No.

Q. Was her green light burning from that time up to the time of the collision?

A. No, it couldn't burn; the cable went from that light over on to our ship.

Q. I understand, Mr. Oehring, that the cable was carried from the place where the "Ocklahama" usually has her green light over to the "Thielbek" and the light which she usually has as her green light was put on the starboard-side of the "Thielbek"?

A. Not her light, but the cable went out from that place where the light of the "Ocklahama" is fastened.

Q. Went out from the screen and went across to the "Thielbek," and then what about the light that was there?

A. The light was an electric-light from the "Ocklahama."

Q. Was it the same light that was in that screen?

A. No.

Q. What became of that light?

A. I don't know; the watchman took it and put it in the wheel-house there.

Q. So that from the time you got in motion, there was no green light on the "Ocklahama" until after the collision?

A. Yes, sir.

(Testimony of Herman Oehring.)

Q. (Mr. Wood) And no red light on the "Thielbek"?

A. No.

Q. You spoke about seeing a red light. Was that red light the light you saw on the shore?

A. On the shore, yes.

Q. How long after you saw that red light on the shore was it before you saw the lights of the "Chinook"?

A. That was only just a minute or so; just a short time.

Q. You saw the red light on the shore before you saw the lights on the "Chinook"?

A. Yes.

Q. And it was after that you saw the "Fagelund"?

A. I saw the "Fagelund" only a minute or two before the collision. I didn't come up until then; I was on the lower deck.

Q. I understand that when you first saw the "Chinook," the course that you were pursuing then would have cleared the stern of the "Chinook" without any trouble?

A. Yes.

Q. But as you came up nearer the "Chinook" your course had so changed that there was barely room on that course to pass the stern of the "Chinook"?

A. Yes, sir.

(Witness excused.)

GERHART GERDES, called as a witness for the libelants, being first duly sworn, testified as follows:

Questions by Mr. Wood:

Q. Are you a mariner? Are you a seaman?

A. Yes.

Q. How long have you been following the sea?

A. Two and a half years.

Q. How long have you been with the "Thielbek"?

A. Nine months.

Q. Were you the lookout this night of the collision, the 24th of August?

A. Yes, sir.

Q. When did you come on duty as lookout?

A. When we got the anchor up.

Q. The "Ocklahama" was towing you?

A. Yes.

Q. Where was your station as lookout?

A. Right forward on the forecastle-head of the "Thielbek."

Q. You were there from the time you got under way?

A. Yes.

Q. Are you accustomed to judging speed? Have you any idea how fast you were going?

A. No.

Q. Did you know anything about the course that was being steered, whether you swung to port or not?

A. Yes.

Q. What was the fact about that?

(Testimony of Gerhart Gerdes.)

A. Our ship was swinging around a little to port.

Q. How far off the Oregon shore were you going up—the Astoria shore?

A. I can't say.

Q. Were you fairly near to it? Could you see the lights on the Astoria shore?

A. Yes.

Q. Would you say you were far off or not very far off?

A. Close to it.

Q. When did you see any lights in the river indicating vessels?

A. About ten minutes.

Q. After you had been going. What lights did you see?

A. Two white lights.

Q. Lying on your course, in relation to your course, what way were they lying, how were they lying as to your course? Port, starboard, or dead ahead?

A. About one point to port.

Q. What lights did they turn out to be afterwards? Do you know what vessel they were on?

A. Yes.

Q. Was it the dredge "Chinook"?

A. The "Chinook," yes.

Q. What other lights did you afterwards see? You saw some lights afterwards, didn't you, on the "Fagelund"?

(Testimony of Gerhart Gerdes.)

A. No.

Q. You didn't see the "Fagelund"?

A. I saw the "Fagelund," but I didn't see its lights.

Q. Why not? You were the lookout.

A. I didn't take any notice of them.

Q. Didn't see the mast-head lights or green light there?

A. No, I can't say.

Q. Did you hear any whistles?

A. What whistles were they?

A. Two short whistles.

Q. Did the "Ocklahama" answer them?

A. No.

Q. Didn't answer them?

A. No.

Q. Did she do anything about stopping her engines?

A. I don't know; I couldn't say.

Q. Did she change her course any?

A. She was swinging a little harder to port.

Q. How long after that did you hear any other whistles?

A. Two or three minutes.

Q. What whistles did you hear?

A. Two short whistles again.

Q. From the "Fagelund"?

A. Yes, sir.

Q. Did the "Ocklahama" answer them?

A. Yes.

(Testimony of Gerhart Gerdes.)

Q. How did she answer them?

A. With two short whistles.

Q. Then what did she do?

A. I don't know.

Q. Swing any more to port?

A. Yes.

Q. How long after these two short whistles from the "Ocklahama" before the collision? About what time?

A. It wasn't long; a couple of seconds.

Q. It must have been longer than a couple of seconds?

A. Not longer.

Q. Did you hear the danger-signal from the "Fagelund," two quick short blasts of the whistle?

A. Yes, sir.

Q. How long before the collision?

A. Just before the collision.

Q. Did you hear the anchor go down?

A. Yes.

Q. How was that in relation to the collision?

A. She blew four short whistles and the anchor went down all at once, together, and ran into our ship.

Q. Where were you at the time of the collision? Did you keep standing on the forecastle-head?

A. We were close together and they ran into us and then I went back.

Q. To get out of the way?

A. Yes, sir.

(Testimony of Gerhart Gerdes.)

Q. Did you notice where the "Ocklahama" ran to when she broke loose?

A. Yes.

Q. How far up did she run?

A. Amidships.

Q. Amidships of the "Thielbek"?

A. Yes.

Q. What part of her was amidships?

A. This is the "Thielbek," swinging like that.

(Indicating.)

Mr. WOOD: Witness indicates the "Ocklahama" swinging bow on at an angle of about 50 degrees to the "Thielbek."

Q. Did you hear any conversation between the people on the "Thielbek" and the people on the "Ocklahama"? Hear any talk? Did anybody say anything?

A. Yes.

Q. What was said?

A. They call and ask if we made any water.

Q. The "Ocklahama" called to the "Thielbek"?

A. Yes.

Q. Did you hear any talk between the "Ocklahama" and the "Fagelund"?

A. No.

Q. Where did you go after the collision?

A. I staid on the forecastle-head.

(Testimony of Gerhart Gerdes.)

CROSS EXAMINATION.

By Mr. Bristol:

Q. How far off was the bow of the "Ocklahama" from the "Thielbek"?

Mr. WOOD: Wait a minute, please.

BY MR. WOOD:

Q. Then you noticed the dredge "Chinook"?

A. Yes.

Q. How far off from the "Thielbek" and the "Fagelund" lying together was the "Chinook" after the collision?

A. About half a ship's length.

Q. How far off from the Oregon shore at this time, the Astoria dock, was it? Farther away?

A. Yes; I can't say exactly.

Q. It was just getting daylight, still dark?

A. Yes, sir.

QUESTIONS BY MR. BRISTOL:

Q. How far off was the bow of the "Ocklahama" from the "Thielbek" when you saw her come up that way?

A. Forty or fifty feet.

Q. Did you see the First Mate? Do you know this man here?

A. Yes.

Q. Where was he when you were on the fore-castle-head?

A. He was forward, too.

Q. Right by you?

A. Yes.

(Testimony of Gerhart Gerdes.)

Q. Right alongside of you?

A. I was first on the forecastle-head.

Q. Where did you stand on the forecastle-head?

A. Forward.

Q. Ahead of the winch? Forward of the anchor-winch?

A. Yes, aft of the jib-boom.

Q. On which side of the vessel?

A. The starboard side.

Q. Then the winch would be between you and the "Ocklahama"?

A. There is no winch on the forecastle-head.

Q. No winch up there; it is underneath?

A. Yes, sir.

Q. Now, when you go down in the fore-peak of your vessel, do you go down underneath from where you were standing, or under your deck?

A. I didn't go down there.

Q. Who did?

A. The First Mate.

Q. Did you see him go down there?

A. I heard what the Captain told him, to go down and see if we were making any water.

Q. How long was that after the "Ocklahama" came up there?

A. Immediately; can't say exactly.

Q. At the time the "Ocklahama" got in that position where you saw her, was it before the Mate went down into the forecastle-head, or was it after that, when he came back?

(Testimony of Gerhart Gerdes.)

A. It was after that.

Q. After he came back?

A. Yes.

Q. How many times have you been lookout on the forecastle-head of the "Thielbek"?

A. Every night.

Q. What is it your duty to do as a lookout?

A. Look out for lights.

Q. You were looking out pretty sharp for lights that night, weren't you?

A. Yes.

Q. Coming up the river from your anchorage, state whether or not you saw a red light on your starboard bow any time after you left your anchorage.

A. I didn't see any lights.

Q. I call your attention as to whether or not you saw a red light on your starboard bow any time after you left your anchorage and prior to the collision. Do you understand me?

A. No.

Q. After the "Thielbek" left her anchorage, when the tug first took you up and coming along up the river from that place. Do you understand?

A. Yes.

Q. Before you saw any other lights at all except the lights of Astoria, did you see any red light on your starboard-hand any place along there?

A. No.

(Testimony of Gerhart Gerdes.)

Q. Was there any other lookout on that vessel with you? You were the only man?

A. No.

Q. You saw no red light on your starboard-hand as you came up the river?

A. No.

Q. If I told you there was a buoy-light out there that showed red all the time, would you believe it?

A. Yes.

Q. Although you had never seen it?

A. Yes.

Q. These two lights you first saw; what kind of lights were they?

A. White lights.

Q. Where did you see them; on the Astoria side?

A. No, the other side.

Q. How far on the other side?

A. I don't know; they were on the port side.

Q. Now, let me understand it. Suppose there is the forecastle-deck of the "Thielbek" (indicating); now, her boom extends pretty well out up there, doesn't it?

A. Yes.

Q. Where were you standing, up there and out at the jib-boom?

A. Right in there (indicating).

Q. How could you see? Your head doesn't come up above that jib-boom, does it? What I want to know is the way this is set on your ship, to see whether you looked over this thing or above it?

(Testimony of Gerhart Gerdes.)

Is it the way I illustrated it and you stood there (indicating)?

A. Yes, I stood there.

Q. Is this jib-boom down there at the prow of the ship, so you have a view over it?

A. No, underneath, on the under side.

Q. So you had a clear view to the port side from where you stood on the starboard bow?

A. Yes, sir.

Q. The first thing you saw two white lights?

A. Yes, sir.

Q. How long after you left anchorage?

A. Ten minutes.

Q. You had run ten minutes before you saw the white lights?

A. Yes.

Q. Sure of that?

A. Yes, sir.

Q. How fast had you been going at that time?

A. I don't know; I didn't take any notice.

Q. You know how fast you came with that ship of yours, don't you?

A. I didn't notice.

Q. Didn't you get any bearing lights on the shore?

A. Yes.

Q. You went as fast up that river as you would if your ship was carrying full sail at sea?

A. Yes.

(Testimony of Gerhart Gerdes.)

Q. You ran for ten minutes at that speed before you saw white lights?

A. Yes.

Q. The white lights were how far off your port bow when you first saw them?

A. I don't know.

Q. How did they appear; a point or a point and a half, or two points?

A. Two points.

Q. Off your port bow when you first saw them?

A. One or two points.

Q. Was it one or two?

A. I don't know exactly.

Q. How many times have you been lookout?

A. Every night.

Q. How long?

A. For nine months.

Q. Lookout for nine months?

A. Yes.

Q. Did you ever have an accident before?

A. No.

Q. When you saw those two lights—now see if you can't remember whether it was a point, a point and a half, or two points off your port bow?

A. One point.

Q. Was it as much as one point? Do you know how much one point is?

A. Yes.

Q. How much?

A. Just like that (indicating).

(Testimony of Gerhart Gerdes.)

Q. Do you know in degrees and minutes. Tell me what you think it is or as near as you can. How much is a point in degrees and minutes? How many points to your compass?

A. Three hundred and sixty.

Q. How many points to your compass?

A. Wait a minute.

Q. Take your time. You must know. I don't want to confuse you. How many points has a sailor's compass got. Great Scott! You can box the compass, can't you?

A. Yes. Thirty-two.

Q. If there are thirty-two points to the compass, how much is a point off the starboard bow? Was it one point of your compass or a certain number of minutes and degrees? How much would you have to swing your ship's head to bring it up to where you saw that light?

A. Just that way (indicating). Eight points; right square.

Q. Is that where the white lights were off your port bow?

A. No.

Q. How much of that eight points now was it?

A. It was going that way (indicating); about three points.

Q. When you first saw the white lights you mentioned you think they were three points off your port bow?

A. That must be about right.

(Testimony of Gerhart Gerdes.)

Q. And you ran about ten minutes at that time?

A. Yes.

Q. Now, then, after you had run that far and ran ten minutes and saw these white lights—You know what a running-light is, don't you; a running light on a vessel? Do you know what a running-light is? Did you notice whether these white lights you saw were upon the land or upon a vessel?

A. Upon a vessel.

Q. What kind of a vessel?

A. A steamer.

Q. Did she have any other lights on her?

A. No.

Q. She had no other lights on her?

A. No.

Q. Didn't have a green light?

A. No.

Q. Didn't have a red light?

A. No. I couldn't see the other side; only saw one side.

Q. That is the only vessel you saw on this whole trip?

A. Yes, sir.

Q. And the vessel you saw only had two white lights on it and didn't have any green lights or red light?

A. I didn't see them.

Q. You are sure of that; sure you didn't see them?

A. Yes, sir.

(Testimony of Gerhart Gerdes.)

Q. When you first saw it off your port bow about three points, from where you stood on the starboard side of the ship, did you report to the pilot of the "Ocklahama" what you saw ahead?

A. Yes, sir, to the First Mate.

Q. Where was the First Mate?

A. Aft.

Q. On your own ship?

A. Yes, sir.

Q. You didn't report to the pilot on the "Ocklahama"?

A. I first reported to the Mate; I reported to everybody after.

Q. What did you say when you saw these two white lights when they came into view? Did you speak in German or English?

A. I didn't yell out for them lights.

Q. Why not?

A. It was clear.

Q. Could you see everything?

A. Yes.

Q. Yet you didn't see any red light or any green light?

A. No.

Q. Although you were lookout on the "Thielbek," you didn't see any red light on your right hand or starboard side as you were coming up the river, but the lights on the shore, you could see those?

A. Yes.

(Testimony of Gerhart Gerdes.)

Q. And there were no other lights you saw except the two white ones in the river?

A. Yes, sir.

Q. What report did you make to the First Mate about those lights?

A. I didn't report them to him.

Q. Did you report to the pilot up in the pilot-house of the tug?

A. No.

Q. What were you supposed to be doing up there as lookout?

A. As I said, it was clear and there was no use to call out.

Q. You take it for granted when you are lookout if you see lights to pass them up to the other fellow to see and if he doesn't it is all right, anyhow?

A. I don't understand.

Q. Do you think that is your duty as a lookout?

A. I don't understand.

Q. What do you understand to be your duties as a lookout? You have been lookout on the night-watch on the "Thielbek" nine months?

A. Yes.

Q. Who taught you your duties as a lookout? Who taught you what to do as a lookout?

A. The Mate.

Q. Which Mate?

A. The First Mate.

Q. Mr. Eggars?

A. He told me.

(Testimony of Gerhart Gerdes.)

Q. When you first went on the "Thielbek," when the Captain first hired you, you shipped as an able seaman, didn't you?

A. Yes.

Q. On the "Thielbek"?

A. Yes.

Q. From what port?

A. Monte Video.

Q. And you signed articles as an able seaman?

A. Yes.

Q. How long have you been to sea?

A. Two and a half years.

Q. What ship before this?

A. A steamer.

Q. Did you ever act as lookout on that steamer?

A. Yes, on a sailing ship.

Q. On a sailing ship before that?

A. Yes.

Q. Ever act as lookout?

A. Yes.

Q. Now, then, what are the duties of a lookout?
What do they teach you to do?

A. Look out for the lights.

Q. After you see the lights, then what do you do?

A. Call out.

Q. Didn't do it in this case, did you?

A. No.

Q. That is all.

(Testimony of Gerhart Gerdes.)

QUESTIONS BY MR. WOOD:

Q. What orders did you get from the Third Officer?

A. He told me to keep a good lookout up at the forecastle end.

Q. How do you explain that you didn't see the lights on the "Fagelund"?

A. I am not sure; I cannot say; I might have seen them and don't remember.

Q. Why didn't you sing out when you saw the lights, because they were clear?

A. I saw the "Fagelund" was coming up and then I sung out.

Q. You sang out when you saw the "Fagelund"?

A. Yes.

Q. But you say you didn't see the "Fagelund"?

A. First I saw the "Chinook," and then the "Fagelund" came along.

Q. But you say you didn't see the "Fagelund." Did you see the "Fagelund" at all before you hit her?

A. No, I couldn't see her at all; the "Chinook" was lying across the river and she came this side, down the river.

Q. You did see the "Fagelund" lights some time that night?

A. Yes, when she came around the "Chinook"?

Q. When the "Fagelund" cleared the "Chinook" you saw her?

A. Yes.

(Testimony of Gerhart Gerdes.)

Q. What lights did you see then?

A. I don't know.

Q. When the "Fagelund" cleared the "Chinook," what lights did you see on the "Fagelund"?

A. I don't know; I can't remember.

Q. Did you sing out then?

A. Yes.

Q. What did you say?

A. I said, "Ship right ahead."

Q. To whom did you say that?

A. To everybody aft.

Q. Did you use German or English?

A. German.

Q. You weren't there by orders of the "Ocklahama"? Just up there by your own ship's orders?

A. Yes.

Q. I will ask the Third Officer what orders did you give him when you placed him on lookout?

A. (Mr. Oehring) I told him to keep a good lookout, but not to sing out for lights ashore; just for vessels under way.

Q. You didn't want him reporting the lights on the river banks?

A. (Mr. Oehring) No, I didn't want him to sing out all the lights ashore.

Q. Did he make his report back to you or the First Officer?

A. To the Chief Mate.

Q. I will ask the Chief Mate, did you get a sing-out from him?

(Testimony of Gerhart Gerdes.)

A. (Mr. Eggars) I didn't get a sing-out from him and sent the Third Mate forward to the fore-castle-head to keep a good lookout.

Q. He says he sang out when he saw the "Fagelund" coming around the "Chinook"?

A. (Mr. Eggars) I didn't hear him.

Mr. WOOD: Mr. Gerdes, you are a German?

A. (Mr. Gerdes) Yes, sir.

Mr. WOOD: And Mr. Eggars, you are a German?

A. (Mr. Eggars) Yes, sir.

(Witness excused.)

Mr. WOOD: I would like a stipulation of this kind, if there is no objection. We ought to produce the man at the wheel, but he is down at Astoria. I would like to stipulate that if produced and sworn he would swear that when they got under way he was ordered to put his wheel amidships and keep it so, and he did keep it so until the time of the collision.

Mr. MINOR: I don't know what the facts are. I haven't had a report on it yet.

Mr. WOOD: I am not asking to stipulate the fact, but that if he were here he would swear as these other men have.

Mr. MINOR: I will let you know about it later, after I have examined into it a little.

Mr. BRISTOL: I am perfectly willing so to stipulate.

It is stipulated and agreed that in the typewritten transcript of the account of the collision as

entered in the log-book of the "Thielbek" there are several inaccuracies and mistakes which Captain Bergmann has gone over with Mr. MacVeagh, and that Captain Bergmann is willing to admit and which have been marked in pencil on the exhibit, and that when a translation is made by Mr. MacVeagh it will be corrected as follows:

In the original log-book the date of sailing from Santa Rosario is put down as the 27th of July. As a matter of fact, that was the 27th of June.

The word "haben" as transcribed should have been transcribed "halten."

The word "durch," in the seventh paragraph of the transcription, should have been left out and the following word "das" should have been "des."

In the eighth paragraph the words "seines Bugs" should have been "ihres Buges."

In the ninth paragraph the word "wieder" should have been omitted.

This is to certify that I, Katherine Beck Irvine, took the foregoing testimony in accordance with stipulation between the parties and that the foregoing is a true and correct transcription of my shorthand notes taken at said hearing, and of the whole thereof. That before giving their testimony the witnesses were duly sworn by Mr. M. M. Matthiessen, a Notary Public for Oregon, to tell the truth, the whole truth and nothing but the truth. That the translations of Libelants' Exhibit 6 and of the certificate from the Seattle Consul from German into English were made at my request by Miss

H. Oxe, who has certified that they are true and correct translations.

Dated at Portland, Oregon, October 10, 1913.

KATHERINE BECK IRVINE.

Filed October 30, 1913. A. M. Cannon, Clerk.

*In the District Court of the United States in and
for the District of Oregon.*

IN ADMIRALTY—No. 6111.

WILHELM WILHELMSSEN, owner of the steam-
ship "Thode Fagelund,"

Libellant,

vs.

The German bark "THIELBEK," her boats, furni-
ture, equipment, tackle and apparel; and THE
PORT OF PORTLAND, owner of the tugboat
"Ocklahama," her engines, boilers, machinery,
equipment, furniture, tackle and apparel,

Respondents.

It is stipulated by and between the respective parties hereto, through their respective proctors, Mr. Wirt Minor, of Messrs. Teal, Minor & Winfree, proctors for the Port of Portland; Mr. Erskine Wood, of Messrs. Wood, Montague & Hunt, proctors for the German ship "Thielbek," and William C. Bristol, proctor for Wilhelm Wilhelmsen, owner of the steel steamship "Thode Fagelund," that said last named steamship being about to depart the Port of Portland and upon the high seas with her

officers and crew, the testimony of Captain M. B. Hansen, her first mate J. A. Hansen, her second mate Harold Rasmussen, her first engineer B. Tollefsen, and her third engineer Hartwick Johansen, and others of her crew, may be taken and adduced before Alva W. Person, a Notary Public in and for said district and within the jurisdiction of this honorable Court, at 502 Wilcox Building, in the City of Portland, at two o'clock in the afternoon of Friday, the 12th day of September, 1912, in shorthand, the signatures of all of the witnesses whose testimony so taken being thereunto waived and may be, by him, the said Notary, duly extended under the terms of this stipulation and certified for use at the trial of this cause as testimony in behalf of the libellant, to the same extent and full purpose as if said witnesses were personally present and testified; subject, of course, to all objections for materiality, relevancy and competency which may be noted at the time of taking.

It is further stipulated between the respective parties, through their respective proctors, that said testimony may also be used in like manner in any cause arising out of the collision herein referred to that may now or hereafter become depending between the "Thielbek" and The Port of Portland and the "Thode Fagelund," whether by independent or cross libel, or if consolidated with this cause, as fully as if said witnesses were personally present and testifying therein.

M. B. HANSEN was thereupon produced as a witness on behalf of the libellant, and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bristol:

Q. Captain, give your full name, please.

A. Martin B. Hansen.

Q. What is your place of residence?

A. Tunsberg, Norway.

Q. What is your occupation?

A. Master at the present time of the "Thode Fagelund."

Q. How long have you been a master on the high seas?

A. About twelve years.

Q. How long have you been with the present ship, "Thode Fagelund"?

A. Now this last time from May, and I have been on her a year before.

Q. Have you ever been with this or any other ship in the Columbia River before?

A. I have been in this one once before; this is the second time in her; and on another ship once before.

Q. This is your third trip then in the Columbia River?

A. Yes, sir.

Q. Do you know whom the "Thode Fagelund" belongs to?

A. She belongs to Wilhelm Wilhelmsen of Tunsberg.

(Testimony of M. B. Hansen.)

Q. Tunsberg, Norway?

A. Yes, sir.

Q. The same person for whom a libel was filed herein?

A. Yes, sir.

Q. And you are the same M. B. Hansen who verified the libel that was filed on August 30th herein, are you?

A. Yes, sir.

Q. What sort of a ship is the "Thode Fagelund"?

A. She is a steamship, steel material, steel steamship.

Q. How long is she?

A. Three hundred and fifty-five.

Q. How much beam?

A. Fifty.

Q. How much depth of hold?

A. I guess twenty-nine or thirty.

Q. What is her gross tonnage?

A. Four thousand three hundred and fifty-two.

Q. Net?

A. Twenty-eight twenty-six.

Q. How many screws has she got?

A. One.

Q. How many engines?

A. One.

Q. What kind?

A. Steam engine, made by Blair & Company; triple.

(Testimony of M. B. Hansen.)

Q. Well, is it triple expansion?

A. Triple; yes, sir.

Q. Now, how much of a crew does she carry?

A. Twenty-eight all told; twenty-nine when we have a purser. Twenty-nine this time.

Q. Who is her first officer?

A. First officer, J. A. Hansen.

Q. And her second mate?

A. H. Rasmussen.

Q. Who is her engineer?

A. B. Tollefsen.

Q. Who is her third engineer?

A. Johansen; what is it? Hartwick Johansen.

Q. She carries three engineers with her, doesn't she?

A. Yes, sir.

Q. The second engineer is now down in charge of the boat?

A. Yes.

Q. We have got two of them here in the room, haven't we?

A. Yes, sir.

Q. When had you arrived in Portland on this last trip?

A. We arrived at Astoria at twelve in the morning. Now, hold on; the eleventh at night, the eleventh of August.

Q. The eleventh of August?

A. September, I mean.

Q. What?

(Testimony of M. B. Hansen.)

A. Wasn't it September?

Q. The eleventh of August. Well, you came in and got cargo, did you?

A. Yes, sir.

Q. Did you get cargo?

A. Yes, sir.

Q. What did you take?

A. Took lumber, pilings, square timber, and dynamite.

Q. Can you state, just in a general way so we can understand it, how that was loaded and whereabouts you put it?

A. We had a few long pilings down below on the bottom of the ship, and the rest of the cargo in the hold was lumber of different sizes, different quality.

Q. Dimension lumber?

A. Different dimensions. On deck we had several big, what we call spuds; these square big timbers, some of them up to thirty by thirty by sixty feet long; and we had several hundred long pilings about seventy or eighty feet, on top, deck load.

Q. That carried the deck load up above or even with, or was it above your forecastle deck at the forward part of your ship, and above the poop deck in the after part of the ship?

A. Yes, it was above the forecastle deck; yes, sir. It was about sixteen feet six high forward approximately, and aft it was——

Q. (Interrupting) Now, what else did she have?

(Testimony of M. B. Hansen.)

A. She had a thousand and thirty-seven cases of dynamite.

Q. Where did she have that?

A. In the poop.

Q. Do you know who were the people that loaded that cargo?

A. W. R. Grace & Company.

Q. You had among the ship's papers sundry documents, and I show you three papers, and ask you to look at them and tell me, if you can, what they are.

A. This is an old charter with the DuPont people in Wilmington, Delaware, dated the 14th of May, 1907. That was a charter with those DuPont Powder Company people. That is a copy. This is mine. This is the one I got from New York.

Q. This is one of those with the ship's papers?

A. The same thing exactly; yes, sir.

Q. You recognize that as the original charter under which you were voyaging at the time? That is, I mean this charter was out, with another paper we will talk about probably later?

A. Yes, sir.

Q. But this is the charter that was given to you as your Captain's copy, and the question is, do you recognize that as a true and proper copy of the one and the same thing?

A. It is a copy of the same thing; yes.

Mr. BRISTOL: Now, unless counsel object, I want to offer the charter in evidence.

(Testimony of M. B. Hansen.)

Mr. WOOD: No objection.

Mr. BRISTOL: Then I will offer that copy, Mr. Person, with the letter attached, showing the clauses, and ask that it be received in evidence.

Said copy of charter so offered was thereupon marked Libelant's Exhibit 1.

Q. Now, the charter you operated under or are now operating under; did you have a copy of that? Or do you recognize that paper (exhibiting paper to witness)?

A. Yes; this is a copy of the present one with W. R. Grace & Company.

Q. The one that you loaded this piling and powder and everything under?

A. Yes, sir.

Q. And pursuant to that charter you took on this cargo, and then what did you do?

A. Took on the cargo, finished up the loading down at Stella, Washington.

Q. And then what?

A. We left Stella that Saturday afternoon or evening at five o'clock, with the pilot on board, and went down to Astoria. On Saturday afternoon, the 24th of August—

Q. (Interrupting) That was Saturday or Sunday?

A. Saturday.

Q. Saturday afternoon?

A. About five o'clock.

Q. Well, that was the 23d of August.

(Testimony of M. B. Hansen.)

A. The 23d; yes, yes; that is right, the 23d.

Q. Now what I want to get at, as you started on that voyage did Grace & Company, pursuant to this charter, tell you where to go?

A. Yes, sir.

Q. Where did they tell you to go?

A. We were bound for Balboa, Panama.

Q. With this same cargo?

A. Yes, sir.

Q. And under the conditions of this last paper that you showed us here?

A. Yes, sir.

Q. There are no other charters that you know of, are there?

A. No, sir.

Q. There are none other than from the de Nemours Powder Company?

A. No, not that I know of.

Mr. BRISTOL: Then I offer that in evidence.

Said paper so offered in evidence was thereupon marked Libellant's Exhibit 2.

Q. You started from Stella about five o'clock on Saturday, with a pilot on board, you say?

A. Yes, sir.

Q. Bound down the river and outward for sea?

A. Yes, sir.

Q. Who did you have for pilot?

A. I don't remember his name.

Q. What kind of a looking fellow is he?

A. A tall fellow, tall thin fellow.

(Testimony of M. B. Hansen.)

Q. A tall thin man.

Mr. MINOR: There is no dispute about who it is.

Mr. WOOD: As far as I am concerned, there is no dispute about who it is.

Q. (Mr. Bristol) Well, with this pilot, she was not convoyed, or anything, was she? She went under her own steam?

A. Yes, sir; her own steam.

Q. When did you arrive at Astoria?

A. About 9:30 Saturday evening.

Q. About 9:30 Saturday evening. Then what did you do with your ship?

A. I got up and changed pilot.

Q. Who did you take as pilot then?

A. Mr. Mack Nolan, the bar pilot.

Q. And your ship was then in the stream at Astoria?

A. Yes, sir.

Q. From 9:30 until when?

A. To 3:20 in the morning.

Q. Of Sunday?

A. Of Sunday, the 24th, yes.

Q. Now you may state whether or not any time between the time that you arrived at Astoria and up to three o'clock in the morning you saw the steamer "Ocklahama"?

A. No, I did not. I went to bed when we came down there, or shortly after, and got up at three o'clock.

Q. And you got up at three o'clock?

(Testimony of M. B. Hansen.)

A. Yes, sir, or about that.

Q. What did you do then?

A. I dressed and got on deck about three-fifteen.

Q. Was your ship then at anchor?

A. Yes, sir.

Q. What did you do after you went on deck?

A. I went on deck and I rung up the standby;
rung up the engine.

Q. You rang up the engine room, which is for
the crew below to stand by?

A. Yes, sir.

Q. Now, at the time that you came on deck that
morning, what was the condition of the weather?

A. It was dark but clear; clear atmosphere, I
mean.

Q. It is what mariners would call a clear night?

A. Yes.

Q. Was the moon shining?

A. I didn't see the moon, I am sure. I didn't
notice it, anyway.

Q. Did you notice whether you could see the
lights in and around the harbor of Astoria?

A. Oh, yes; very well.

Q. Now, when you came on deck and gave the
standby signal for the engine crew, where was this
pilot Nolan?

A. He was on the top of the wheel house.

Q. That is really the bridge of the "Thode Fage-
lund," is it not?

A. No. Where I was standing is the bridge,

(Testimony of M. B. Hansen.)

but we always go on top there to have a good lookout.

Q. He went clear to the top of the pilot house?

A. Yes.

Q. And above that you have a kind of canopy or rigging over that, didn't you?

A. I have an awning over that.

Q. An awning?

A. Yes, sir.

Q. And he stood between that awning and what was really the ceiling of the pilot house; the deck of the pilot house?

A. The roof, the deck; yes.

Q. The deck?

A. Yes; he stood on the deck.

Q. From where you stood state whether or not you could see over the deck load of your vessel?

A. Yes, sir; I could.

Q. And the pilot was how far above you?

A. Well, he was about seven feet above me.

Q. Would that be his head or his feet?

A. His head would be seven feet above my head and his feet about seven feet above my feet, or about that, six and a half or seven.

Q. What were the crew of the "Thode Fagelund" doing with respect to her then condition?

A. The Chief Mate was forward heaving up the anchor.

Q. Who was that man again, Hansen?

A. The Chief Mate, J. A. Hansen.

(Testimony of M. B. Hansen.)

Q. Now, when you say forward, how far forward was he? Was he right on the forecastle deck?

A. On the forecastle head, yes, sir; that is what I mean by forward.

Q. Forecastle-head. And anybody else there?

A. The carpenter was there heaving in the anchor.

Q. Were there any men in the chain lockers?

A. Two men in the chain lockers; one man was putting out the lights, one at the wheel.

Q. Right while you are there, by the bye, who was the man that put out the lights?

A. Sailor Bernard Meier.

Q. Sailor Bernard Meier?

A. Sailor Bernard Meier.

Q. Now, after you come on deck, about how long—you have a steam winch forward to operate your anchor chains, haven't you?

A. Steam windlass, yes.

Q. Steam windlass. Now how long did it take that morning to weigh your anchor?

A. It was hove short when I came on deck, and it took five minutes to get it up.

Q. When you say hove short, you mean the slack was taken out of the anchor chain?

A. No; I mean we had thirty fathoms of chain out, and the mate gets on the forecastle head and gets ready; he heaves short; it leaves about fifteen fathoms out, and he heaves the rest of it up in about five minutes.

(Testimony of M. B. Hansen.)

Q. Now that morning when the anchor was weighed, what was the then state of the tide; how was it running?

A. It was just beginning to flood.

Q. That is to say, the current in the Columbia River would be—

A. (Interrupting) Coming in.

Q. Running upward?

A. Coming in; yes.

Q. And your ship's head, therefore, would lay in what direction?

A. Heading out.

Q. That is, you mean downstream?

A. Yes, down and out; yes, down.

Q. How long was it, if any time elapsed, from the time your anchor was hove in until you got under way?

A. As soon as the mate sings out, "Anchor is up, sir," we rung her up down below, slow ahead. It just takes about a half a minute or a quarter.

Q. To give that signal, by the time those various commands are passed, and to get the signal communicated to the engine below, it takes about that length of time, does it?

A. Well, say ten, fifteen or twenty seconds.

Q. Well, now, how long was it before your ship commenced to move?

A. Oh, well, it takes from dead stop to slow speed, slow bell—whatever you call it—slow engine,

(Testimony of M. B. Hansen.)

it may take a couple or three minutes before it starts to move.

Q. After your ship commenced to move, what other commands, if any, were given?

A. After about five minutes was giving signals down to the engine for half speed.

Q. And that order came from whom?

A. From the pilot.

Q. Who executed it first?

A. The pilot gave me the order and I answered him, and I rang up down to the engine.

Q. Now you have the Mechan telegraph system on your steamer, haven't you?

A. Yes, sir.

Q. And by pulling a lever, as I understand it—let me fix your position. You were standing on which side of your steamer?

A. On the starboard side.

Q. On the starboard side. Now on that side and right near where you were standing was there a telegraph standard?

A. Yes, sir. I was standing right by it.

Q. There is one also on the other side of your wheel house, is there?

A. Yes, sir.

Q. On the port side?

A. Yes, sir.

Q. And you were using the starboard one, and that communicates with the large dial telegraph in the engine room below; is that it?

(Testimony of M. B. Hansen.)

A. Yes, sir.

Q. And how do you know whether the order that you gave, if you do know it, if so explain how you know it, is communicated to and recognized by the men in the engine room?

A. They answer back the same way on the same kind of a telegraph. It just shows by an arm, a handle or an arm.

Q. On the handle it has an index lever that points to these various commands?

A. Yes, sir.

Q. First when you move it to stand by, then it shows stand by below; is that it?

A. Yes, sir.

Q. Then you get an answer to that; and then the next command that you move it is likewise communicated. Is that the way it works?

A. That is how it is; yes, sir.

Q. Did you get the same answers from the engine room that you gave from the deck?

A. Yes, sir.

Q. Now, you think you had been going for about five minutes before you got that command of half speed ahead?

A. Yes.

Q. Now, after you got the command of half speed ahead, was there any other command given increasing the speed of your engines or of your ship?

A. No.

(Testimony of M. B. Hansen.)

Q. Was there any time, if at all, when her headway was stopped, and if so when?

A. Her headway was stopped.

Q. At what time about, if you can state?

A. About ten minutes later.

Q. That would be in the neighborhood of—

A. (Interrupting) Three-thirty.

Q. Three-thirty?

A. Or three thirty-one.

Q. Now, you may state how her headway was stopped and what was done.

A. I already stated she was going slow for about five, and she was going half for about three to five minutes; she was stopped about 3:30. Her engine was stopped at 3:30 and put full speed astern.

Q. Who gave that command?

A. The pilot, Mr. Nolan.

Q. And you communicated it in the same manner as you have described, through the telegraph to the engine room below?

A. Yes, sir.

Q. Was it answered?

A. Instantly, yes, sir; answered.

Q. Promptly?

A. Promptly; very.

Q. And what was then done with your ship?

A. Well, about two minutes later the sailing ship "Thielbek" run into us, run into our port bow.

(Testimony of M. B. Hansen.)

Q. Whereabouts did the "Thielbek" hit you with respect to your port bow?

A. Pretty near the stem, about on the hawse pipe, port hawse pipe.

Q. Now, in order to aid your description and to expedite, I show you a picture which purports to be that of a vessel, and ask you if you recognize it.

A. Yes, sir; I do.

Q. What vessel is it?

A. The "Thode Fagelund."

Q. And is that the way she appeared loaded and on the morning of Sunday, as you describe?

A. Yes, exactly.

Q. That is what side of her?

A. The starboard.

Q. The starboard side of her?

A. Yes, sir.

Q. And you may state whether or not the picture is or is not, and if it is not, say where, a true representation of the ship as she then appeared?

A. Very, very true; yes.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 3.

Q. Now, I show you what purports to be a photograph and ask you to look at it and tell me what that is.

A. That is a photograph of the port bow of the "Thode Fagelund" after the collision.

(Testimony of M. B. Hansen.)

Q. How long after the collision was that taken.
Well, state, if you know, when it was taken.

A. It was taken Sunday before noon.

Q. Sunday forenoon?

A. Before noon.

Q. There was no change made in the conditions at all, was there?

A. No.

Q. It is a true representation of what you saw at the time, is it or not?

A. Absolutely.

Q. Now that is the port bow and the port side of the "Thode Fagelund" showing some piling?

A. Yes.

Q. That is the deck load referred to?

A. Yes.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 4.

Q. Now, I show you another picture, which seems to be a view not showing so much of the ship but more of the bow?

A. Yes.

Q. In that picture the anchor chain I call your attention to seems to be down and tending to show that the anchor is in the water?

A. Yes, sir.

Q. That was after the collision?

A. That was dropped down before the collision.

Q. And that is the same anchor chain?

(Testimony of M. B. Hansen.)

A. The same anchor and same chain.

Q. Now that picture was taken after the "Thielbek" had drawn away from you, was it?

A. It was taken Sunday morning before noon, yes.

A. Exactly, yes.

Q. Does it truly represent the conditions of your ship at that time?

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 5.

Q. Now in that same connection and with Number 5 that I just showed you, I show you a picture of the bow with an apparently closer view, with the anchor chain a little more taut?

A. Yes.

Q. And showing more a length view of the ship?

A. Yes.

Q. How about that picture? Is there anything wrong with the conditions as it appears?

A. Exactly the same thing as it was.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 6.

Q. Now I show you a picture more quarterling of the bow of the "Thode Fagelund," and ask you if you identify that.

A. Yes, sir.

Q. And that shows the steamer and the anchor chain quite loose?

(Testimony of M. B. Hansen.)

A. Yes, sir.

Q. And a view that is more or less across the bow than the one, Number 6, that you just looked at?

A. Yes, sir.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 7.

Q. Now I show you a picture and ask you to tell me what that is.

A. This is taken from her bow.

Q. Of the "Thode Fagelund"?

A. Back of the forecastle head; yes.

Q. Looking forward?

A. Looking down forward.

Q. Looking down forward towards the front of the vessel? Towards her stem, I mean?

A. Yes, sir; just taken right down that way (illustrating).

Q. Can you state whether or not that would be taken from a position on the port side of your vessel or upon the starboard side?

A. Taken on the port side.

Q. Does it correctly show the conditions?

A. Exactly.

Q. There was no change between the time when that photo was taken and when the "Thielbek" drew away from you, was there?

A. No.

Said photograph was thereupon offered in evi-

(Testimony of M. B. Hansen.)

dence on behalf of libelant and marked Libelant's Exhibit 8.

Q. Now I show you another picture and ask if you can identify that as to the place where and what it is of.

A. It is the same place, in the port side.

Q. Only further back on the port side, isn't it?

A. No; it is a little further forward, but it is taken from the starboard side, over the port.

Q. Taken from the starboard side over to port?

A. Yes, sir; taken from the starboard side looking over to port.

Q. Yes. Really looking into the picture where this bar is bent is along the bulwark rail of the port side of your steamer; is that correct?

A. Yes, sir.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 9.

Q. Now I show you another one and ask you to tell me what that is?

A. That is daylight through the bow of the "Thode Fagelund."

Q. Can you tell me what view of the vessel that is, because we have to get this understood by those who look at it?

A. It is taken from inside from the fore peak, the upper fore peak.

Q. Looking out?

A. Yes. It is taken on the upper fore peak.

(Testimony of M. B. Hansen.)

Q. Is that a true representation of the condition at the time, as far as the picture shows?

A. Yes; very; very.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 10.

Q. Now I show you number 11 and ask you to tell me what that is?

A. That is the port side of the forecastle-head.

Q. Aft of the hole that you just described in picture Number 10?

A. Yes; part of the ruins of the forecastle and taken aft. That is taken from forward. That is taken from forward showing aft.

Q. Does that truly represent the condition at the time?

A. Yes, sir.

Said photograph was thereupon offered in evidence on behalf of libelant and marked Libelant's Exhibit 11.

Mr. BRISTOL: We offer those in evidence as part of the witness' diagramatic explanation.

Q. Now if you can, please state when the "Thielbek" struck you what took place on board your vessel?

A. We were going full speed astern before, and we were going full speed astern then.

Q. And how far did the impact cause the "Thielbek" to penetrate?

A. How far did she run in, do you mean?

(Testimony of M. B. Hansen.)

Q. Yes.

A. Run in about twelve feet or more, I guess; ten or twelve feet from the side in, from the bow in about twelve feet.

Q. You mean that, twelve feet penetration along a line of the bulwark rail where it ought to be, as to where the prow of the ship shows that she brought up against some of the iron framework?

A. Yes.

Q. Now how far did that fracture extend downward in your ship, if at all?

A. About twenty-three feet.

Q. What would be the width, if you know, along the top of the aperture measured from the direction of the stem down towards the waist of the ship? How wide is it?

A. From the stem. Well, it would be pretty near, the upper part of it would be about fourteen feet, I guess. About fourteen feet, the upper part of it.

Q. Can you describe to us what was broken by the collision?

A. Well, I have got the name of all of those plates, and I can tell you every plate was broken from the real and down for twenty-three feet.

Q. Well, in order to identify it so we can get it—

A. (Interrupting) Beams and stanchions.

Q. Well, was there anything in that part of the ship where this bow of the "Thielbek" came into you? Was there anything in there?

(Testimony of M. B. Hansen.)

A. Yes; lots of stores.

Q. What became of them?

A. Lots of them fell out and fell overboard through the hole.

Q. And what happened to some of the rest of them?

A. Fell down in the water and lay down in the fore peak in the water.

Q. Your ship took in water as the result of this collision?

A. The fore peak got full; yes; twenty-seven feet abaft.

Q. Is she entirely dry now?

A. No; she is leaking a little down there.

Q. In order to get at the specifications of what was hurt or injured, will you tell me whether or not you had any examination made?

A. We had an examination made down in Astoria, preliminary.

Q. Preliminary. Who was that made by?

A. Captain Veysey.

, Q. And anybody else?

A. Captain W. C. McNaught.

Q. Anybody else?

A. Not surveyors, no. Captain Swensson was there and myself was there, but not surveyors.

Q. Now after you got your ship to Portland did you make any further more complete examination?

A. Yes, sir.

Q. And who made that?

(Testimony of M. B. Hansen.)

A. Captain Veysey and Captain McNaught.

Q. Now those men were asked by you to do that, were they?

A. Yes, sir; by counsel and by me, and by Captain Swensson.

Q. Yes, and they have made that survey, both preliminary and complete, in each instance, have they?

A. Yes, sir.

Q. After the "Thielbek" struck you you may state if you know what position, if any, the "Ocklahama" took. I am trying to arrive at the time, Captain, so that both you and counsel understand, as near as possible the instant of impact what position did the "Ocklahama" take?

A. Just a few seconds after we were struck she come up from alongside of the ship and up to us and asked if she could do anything for us, if we needed any assistance, to which I answered, "No, thank you, we are all right"; so far as I see, you understand.

Q. Now I would like to get that rather well defined. How long a time was that—the "Ocklahama" was in what position on the "Thielbek"?

A. Why, you understand she was moored on the port quarter of the "Thielbek."

Q. Well now, the "Tihelbek" is quite a long ship, isn't she?

A. Why, yes, I guess she is about two hundred

(Testimony of M. B. Hansen.)

and fifty feet, something like that. I don't know. Probably three hundred.

Q. Well, at any rate, she is longer than the "Ocklahama"?

A. Oh, yes, by a long ways.

Q. Now did you see the position of the "Ocklahama" at the time that the "Thielbek's" bow penetrated you?

A. No, I didn't see her; no. I could not see the boat; I could see her lights.

Q. You could see her lights. Now how long was it from the time that he "Thielbek" was in to you before the "Hassalo" was alongside of her?

Mr. WOOD: The "Hassalo"?

Mr. BRISTOL: I mean to say the "Ocklahama."

WITNESS: The "Ocklahama"?

Q. Can you estimate that time, or do you know?

A. Oh, about fifteen seconds, or a quarter of a minute, I should think, or something like that.

Q. What was done, if anything? How long did it take, if you know, to get the "Thielbek" away from your ship?

A. I reckon we were working on it for half an hour or three-quarters. We were backing fully a half, for half or three-quarters of an hour before we got loose.

Q. And what was the "Thielbek" doing to get loose, if anything?

A. After he came up to us and asked us if we needed any assistance, which I answered, "No, sir,

(Testimony of M. B. Hansen.)

thank you," I understand he went astern on the "Thielbek" and got ropes on her and was towing astern, on the "Thielbek's" stern.

Q. Now how long was it before you were separated?

A. About three-quarters of an hour.

Q. Now going back for a moment to the time when you went on deck, I will ask you what the condition of your ship was?

A. She was in very,—quite seaworthy and in perfect condition.

Q. How was it with respect to her tackle?

A. All first class.

Q. And her crew?

A. A-one.

Q. And her machinery?

A. A-one.

Q. And her boilers?

A. A-one.

Q. How was it with respect to her side lights?

A. All out according to the international rules with ship under way.

Q. Then did you or not have your mast-head cages set up and your lights in them?

A. Yes, sir; I had two, one forward and one aft. We always use two.

Q. You have two masts on the "Thielbek"?

A. On the "Thode"; yes, sir.

Q. On the "Thode Fagelund," I mean. That word "Thielbek" was a misslip of the tongue. Do

(Testimony of M. B. Hansen.)

you know yourself, or would the engineer know, what is the size of the "Thode's" screw?

A. The chief will tell you that, sir.

Q. Do you know whether or not the "Thielbek" at this time was carrying any cargo, or was she light?

A. I understand she was in ballast; yes. I haven't been aboard and seen it, but I was told so.

Q. Now while you were in that condition which you have last described, and after you had started under this slow bell, as you have told us, how long was it, how far if you can give me—you can specify both time and distance, if you can—that you proceeded before you observed the "Thielbek" and "Ocklahama"?

A. We had run, I should think, about two ship lengths. That means about seven hundred feet, probably.

Q. About how far?

A. About six or seven hundred feet. And the time, I should think would be about seven or eight minutes.

Q. Now at that time where did you first observe—which one did you see first, the "Thielbek" or the "Ocklahama"?

A. I could not see the "Ocklahama." I saw the "Thielbek."

Q. And what did you see of her?

A. I saw the upper part of her rigging; that is from her topsail yards and up.

(Testimony of M. B. Hansen.)

Q. Against the sky?

A. Against the sky, as over the hill on the southern part of Astoria, or the southwest, whatever you call it; west, probably.

Q. And where did she appear to be coming with respect to your ship? Was she out on the right hand side of the channel, or was she in the center, or was she on the left hand side as you viewed it from your view?

A. From the bridge the way I viewed her she was on the starboard bow a little.

Q. On your starboard bow?

A. Yes.

Q. Now when you say a little do you mean an eighth point, a half point or a whole point?

A. Well, about three-quarters of a point, I guess.

Q. About three-quarters of a point?

A. Yes, sir.

Q. And how far off did she appear to be at that time?

A. Oh, I should think from twelve to fifteen hundred feet, something like that.

Q. Now what, if anything, was done by your vessel, or you, or your pilot, or anybody else, or with reference to the operation of the "Thode" at that time when you first got a view of the "Thielbek" and "Ocklahama"?

A. The pilot blowed two short blasts of the

(Testimony of M. B. Hansen.)

whistle when he first saw her, or shortly after he first saw her; just instantly.

Q. Was there any conversation between you and the pilot?

A. I told the pilot, "I think it must be a tow coming up there, Pilot"; I said ship; he says, "Yes, I see her."

Q. How long was it after that that those two blasts of the whistle were blowed?

A. Just about two or three seconds.

Q. In other words, this conversation of yours and his, with the blowing of the whistle, were practically simultaneous?

A. Yes.

Q. Did you receive any answer from the "Ocklahama"?

A. No.

Q. Were you under slow bell or half speed ahead at that time?

A. We were on a half bell, but the machine was stopped instantly, under the pilot's orders.

Q. Then what was done?

A. We blowed two more whistles.

Q. Were those two whistles answered?

A. Yes, they were answered.

Q. By whom?

A. From the tow boat "Ocklahama" alongside of the ship "Thielbek."

Q. Pursuant to those two whistles which you gave and which were answered, state whether or

(Testimony of M. B. Hansen.)

not the "Ocklahoma" and "Thielbek" changed their course?

A. They didn't seem to me to be much changing, or any changing whatever, hardly.

Q. How is that?

A. They didn't seem to me they changed much or any in their course.

Q. What was the next maneuver aboard your vessel, if any?

A. Full speed astern.

Q. And state whether or not any signals were given.

A. Four short blasts were given by the pilot.

Q. How soon after you blew the last two whistles? Well, we will take it the first two, so as to get it chronologically. After you blew the first two whistles and found your signal wasn't answered, what signal, if any, did you communicate to the engine room?

A. Stop. The first was stop the engine; next was full speed astern.

Q. And you continued, as I understood your recount before, with that full speed astern until struck?

A. Yes, sir.

Q. Except that you put the anchor out after that?

A. Yes, sir; the anchor was let go before; yes.

Q. Now to be sure I covered that, by whose order, if any, was the anchor let go?

(Testimony of M. B. Hansen.)

A. By the pilot's, sir.

Q. And at what interval of time, or what moment of time with respect to the position of the "Thielbek"? Had the "Thielbek" struck you?

A. No, sir. It was before.

Q. Before the "Thielbek" struck you?

A. Yes, sir.

Q. Can you tell us how far the "Thielbek" seemed to be away at the time you dropped your anchor?

A. About five—four or five hundred feet, probably.

Q. You think it was—

A. (Interrupting) Yes; a couple of ship lengths.

Q. You think it was more or less than that?

A. I should judge a couple of ship lengths, ordinarily six hundred feet.

Q. Now you may state, Captain, from what you saw and observed there whether or not there was room for the "Thielbek" and the "Ocklahama" to pass you, either in accordance with your signal, or to have effected a safe passage regardless of that signal?

A. Room enough on either side.

Q. After four blasts were blown upon your whistle did you get any answer from the "Ocklahama"?

A. No, sir.

Q. Did she change her course any?

(Testimony of M. B. Hansen.)

A. Nothing noticeable by my eyes. Very little, if any.

Q. Well, am I to understand, then, from your description of what you saw, that the "Ocklahama" and the "Thielbek," regardless of these two whistles which were not answered and the two whistles which were answered, and the four blasts which you gave, that she kept right on with her tow?

A. Yes, sir.

Q. Now with respect to the position she was first in when you say you saw her topgallants or royals above the headlands of Astoria, please state whether or not you could see, and if you did see, what lights you saw.

A. I saw two red lights on the starboard bow. One was on the bow of the "Thielbek" and another was on the bridge or on the towboat up in his light screen on the port side of the "Ocklahama."

Q. How long were those lights in view to you?

A. They were in view to me from the first I saw her until she struck.

Q. You may state whether or not at any time you saw any other light upon either the "Ocklahama" or the "Thielbek"?

A. I saw two small mast-head lights on the "Ocklahama" and two white lights, over the ship "Thielbek" like, you know, and—

Q. (Interrupting) Let me ask you this question: Had you, from the time you came out and

(Testimony of M. B. Hansen.)

took your first position on your deck, taken any other position up to the time of the collision?

A. No, sir. I was standing there all the time.

Q. Right at this telegraph box?

A. Yes, sir.

Q. Now from that position which you so occupied did you at any time see any other navigating light of the "Ocklahama" or Thielbek" than those which you have described?

A. I saw the green one of the "Thielbek" later on.

Q. At what time with respect to the collision? I mean before or after?

A. Why, I guess I saw it about a minute or two before, up till she struck.

Q. So then, I am to understand that the only change, if any, that was effected in the position or course upon which the "Thielbek" and "Ocklahama" navigated was one which a minute or two before the collision brought into view the green light of the "Thielbek"?

A. Yes, sir; and the red was shut out.

Q. I show you what purports to be a chart of the Columbia River at a point or place which, according to chart Number L. C. R. 18626, Columbia River, Point Harrington to Ft. Stevens, of the issue of August-September, 1911, what purports to be the harbor of Astoria?

A. Yes, sir; I see.

Q. And ask you to please take this soft pencil.

(Testimony of M. B. Hansen.)

which is lead, and calling your attention to Tongue Point and then directing your attention to what purports to be the track of the Astoria and Columbia River Railroad and up along to certain wharves and docks apparently in view of what appears to be a platted city, and to the white diamond shape marks, which would seem, according to the nomenclature upon the map, to indicate buoys, would you please indicate to me about where you came to anchor, as near as you can?

A. Pretty near this buoy here; right there (indicating). We were anchored here just enough to swing good and clear of, what do we call that buoy?

Q. Number forty-eight?

A. That is a little flash buoy.

Mr. WOOD: That is number two.

Mr. BRISTOL: Yes, number two. That is right. That is number two flash buoy?

A. Yes, sir.

Q. And you were off about how far?

A. I guess we were right in the center, about there (indicating).

Q. About directly west?

A. Yes, maybe west.

Q. And in the center of the channel?

A. Yes. I think it is; yes, you are right.

Q. Directly west of that buoy?

A. Yes, sir.

Q. Of the little flash light buoy number two?

A. I would not say directly west; no. I would

(Testimony of M. B. Hansen.)

not say that, directly west, because that means direct right in the degree.

Q. Well, you don't want to testify as accurate as that?

A. Yes, sir; this is only calculation.

Q. You think its position was between marks 35 and 37 in the fathom soundings in the channel there where you put the cross?

A. I think about that.

Q. Now your ship's head lay down-stream?

A. We come out and anchored down on the ebb. The bow was up when we come down.

Q. But you swung around and anchored on the ebb of the tide?

A. On the ebb; yes.

Q. Your bow laid at that time, with the ebb your bow laid up-stream?

A. Yes, in the evening.

Q. That was Saturday evening?

A. Yes.

Q. Now in the morning you were relatively in the same position but your stern was up-stream and you were headed down?

A. Yes, sir.

Q. That is between fathom soundings 35 and 37 opposite flash buoy number two, and somewhere opposite there (indicating)?

A. Opposite the railroad dock, I believe. Is that the dock there (indicating)?

Mr. WOOD: I could not tell you.

(Testimony of M. B. Hansen.)

A. Well, somewheres there. That is the dock right there (indicating); yes. I am almost sure we were off there.

Mr. WOOD: That must be the O. R. & N. dock there.

WITNESS: Now, you see, we were off the railroad dock, we will call it.

Q. (Mr. Bristol) Now do you know whether that is the O. R. & N. dock or the Astoria dock?

A. That is the one.

Q. The O. R. & N. or the Astoria?

A. The O. R. & N., I guess it was.

Q. You were off the O. R. & N. dock?

A. I think it was. There is another one.

Q. The O. R. & N. dock is down here (indicating), you see.

A. No; I got that wrong.

Q. Did you go ashore, Captain, at all?

A. Yes, sir.

Q. Now, for instance, here is Nineteenth Street, Eighteenth Street, Seventeenth, Fifteenth, Fourteenth, and so on, Twelfth, Eleventh (indicating); see? Well, this is down in the center of town, in Astoria, down in here (indicating).

A. Well, we went ashore where the pilots go ashore.

Q. Can you locate your position any place with reference to the buoy, for instance number 13?

A. I never took any bearings, and we were under anchor about here (indicating); just had

(Testimony of M. B. Hansen.)

plenty of room enough to swing clear of that buoy there; that is all.

Mr. MINOR: To swing clear of buoy number two.

Mr. BRISTOL: To swing clear of buoy number two.

Mr. WOOD: Flash buoy. These buoys over here (indicating) are numbered also, I think.

Mr. BRISTOL: Yes, this buoy is numbered.

Q. Now can you tell me about the relative position where you saw—you could see the lights of these docks all down here, could you?

A. Yes, sir.

Q. Now whereabouts was the "Thielbek," if you can fix it, when you first saw her with reference to you people?

A. She must have been down here, I guess, somewhere (indicating).

Q. Well now, this thing shows in scale here one inch to twenty thousand feet.

Mr. WOOD: Twenty thousand feet?

Mr. BRISTOL: Yes, one inch to twenty thousand feet he has got there.

WITNESS: A twentieth of an inch is a thousand feet?

Mr. BRISTOL: A twentieth of an inch is a thousand feet. One inch would be twenty thousand feet.

WITNESS: Could that be correct?

(Testimony of M. B. Hansen.)

MR. BRISTOL: That is what he has got there. It looks to me to be an awful hiatus.

WITNESS: One inch to two thousand feet.

MR. BRISTOL: That is what it seems, but it is twenty thousand there.

WITNESS: It is only fifteen hundred feet across there.

MR. BRISTOL: You see, there it is. There is something wrong about that. It is right there plain. Wouldn't you read that twenty thousand, Mr. Wood?

MR. WOOD: Yes, it looks that way. It is certainly a mistake.

MR. BRISTOL: It must be a mistake. I think this must be two thousand feet to the inch. That is the way these things generally are.

WITNESS: I should think it was, yes; because down here I think it is about fifteen hundred feet across there (indicating), I believe.

Q. That is about the vicinity of the collision where you are marking, is it?

A. Yes; a little more this way, I guess.

Q. A little more up-stream. Now where do you think, as near as you can locate it on this, that you first saw the "Thielbek"?

A. That is hard to tell.

Q. I know it is, it is so small a scale.

A. I am not going to put it down there, because I don't know where she come from, and in a dark night like that it is hard to tell when I saw her

(Testimony of M. B. Hansen.)

first. When I first saw her she was down in here (indicating), of course.

Q. She was down in here opposite buoy number eleven when you first saw her?

A. I would not say that, either, whether opposite number eleven or number nine. I could not say where she was.

Q. You could not estimate the distance how far down-stream she was from you?

A. I estimate that I saw her about twelve or fifteen hundred feet, when I first saw her, according to the time and the distance run.

Q. Now there was no other anchorage you changed—in other words, the position you have marked on that chart there is the place where you left with your ship that morning on the outward bound going?

A. No other anchor.

Q. No other anchorage of your chain. That is the position you left from, of that ship?

A. That is the only one, yes.

Q. Now I show you a paper and ask you if you recognize it?

A. Yes, sir.

Q. What is that?

A. That is the note of protest.

Q. Who made it?

A. V. Boelling.

Q. Well, who made it before V. Boelling?

A. I did.

(Testimony of M. B. Hansen.)

Q. What date?

A. The twenty-fifth of August.

Q. The 25th of August. Does that relate to this particular collision you have described?

A. Yes, sir.

Mr. BRISTOL: I offer that in evidence. Said paper so offered was thereupon marked Libellant's Exhibit 12.

Q. You have not had opportunity yet to extend that protest, have you, Captain?

A. No.

Q. As I understand it, then, Captain, when you first weighed anchor the "Thielbek" and "Ocklahama" were not in sight?

A. No, sir; I didn't see her.

Q. Did you see any indication during any time of the giving of the signals that were given by your boat, that the "Ocklahama" or "Thielbek" slackened her speed?

A. No, I could not see that.

Q. Well, what is the fact as to whether or not your vessel had proceeded far enough on her way to get more than mere steerage way?

A. That is all she had.

Q. When you dropped your anchor do you know how much chain was let out?

A. About fifteen on the windlass; the shackle on the windlass was about the fifteen fathom shackle.

(Testimony of M. B. Hansen.)

Mr. WOOD: Does that mean at the time of the collision, or when he first anchored before?

Mr. BRISTOL: No; I mean at the time of the collision.

WITNESS: When we anchored before the collision, yes.

Q. When you anchored just before the collision? Now when you dropped the anchor and just about that time you may state whether the pilot gave any other signals?

A. He gave those four short blasts twice.

Q. Did you hear the commands of Nolan—who was at the wheel of your vessel?

A. The second mate.

Q. What is his name?

A. H. Rasmussen.

Q. Did you hear the commands of Nolan, the pilot, to your second mate, Rasmussen?

A. I heard him and I passed them on to the man at the wheel.

Q. Were the orders given to the man at the wheel such orders—

A. (Interrupting) Yes, sir.

Q. (Continuing)—as were calculated to avoid or to bring about a collision?

A. To avoid it.

Q. Were they executed?

A. Yes, sir.

Q. In the position that you first saw the "Thielbek" state what lights, if any, would ordinarily be

(Testimony of M. B. Hansen.)

observable to anyone on the "Thielbek" of the lights of the "Thode Fagelund"?

WINTERESS: Repeat that, will you, please?
(Question read.)

A. Her two mast-head lights and her green light should be seen by the "Thielbek," as they were burning brightly.

Q. At that time and under the circumstances that you have described, what was it that you could have done to have avoided a collision?

A. We could not do anything to avoid it. There wasn't anything else to be done.

Q. Returning, for a moment, to the actual effect of the collision on your ship, state what position the stem of the "Thode Fagelund" was placed in after the collision.

A. It was turned over to the starboard, bent over to the starboard side.

Q. In the position that you were upon the bridge of the "Thode Fagelund" what position, with respect to your ship, did the bowsprit and martingales of the "Thielbek" take?

A. I don't think she has a martingale, but her bowsprit come in slanting from the port bow and slanting over, like, four or five degrees.

Q. So that the shape of her cutting direction, if the bowsprit had been long enough it would have extended out to the starboard of the foremast?

A. The starboard side of the foremast, yes.

Q. Can you tell me anything about your efforts

(Testimony of M. B. Hansen.)

to get facilities here to repair your ship? Were you able to get them here, and so forth?

A. Oh, yes, it could be done here.

Q. How about your dry-dock?

A. They would not dry-dock the ship with any cargo in it whatever. Do you like to have these letters read to that effect?

Q. No, we don't need the letter. I can prove that otherwise. Is the present charter money paid under the charter through you, or paid direct to the owners?

A. Direct to the others. That is, it goes to Bowring & Company, New York, and from New York to the owners.

Q. Bowring & Company are the agents in New York?

A. Yes, sir.

Q. You don't know how that is paid yourself, of your own knowledge?

A. No. Some steamers are paid fortnightly, others are paid monthly; in fact, I don't know how these are paid.

Q. Well, state what the fact is as to whether or not under circumstances such as these, if you know whether the charter hire stops with respect to your owners on the operation of this ship?

A. Stop on the minute we got in collision.

Q. Now did Grace & Company do anything with respect to this cargo themselves? If so, what?

(Testimony of M. B. Hansen.)

A. They have taken the cargo out, yes, and are going to reship in another steamer.

Q. And you took what course at Astoria after the collision, with respect to cargo requirements? Just state briefly what you did.

A. Called the surveyors and had a survey and got recommendations as to what to do.

Q. And in pursuance of that you did what?

A. Took out some deck cargo and lightened her up to twenty-three and proceeded to St. Johns, the city dock, and took off the rest of the cargo, some on the dock and some on lighters. Some timber was rafted, pilings were rafted.

Q. And the piling you put in a boom?

A. In a boom, yes. That is what they call it.

Q. And what do you say as to whether or not that work was necessary?

A. Sir?

Q. What have you got to say as to whether or not that work was necessary?

A. That was necessary to do to get the ship on the dock and repaired and inspected, and an examination of the bottom of her.

Q. And that is the work you are now about to have done, is it?

A. That is what it is.

Q. And if this collision had not happened would that work have been occasioned?

A. No, sir. If it hadn't happened we would have been down in Panama now by this time.

(Testimony of M. B. Hansen.)

Q. Now what draft did you have, if you know, on the forward end of your vessel on August 24th, prior to the collision?

A. She was on an even keel; she keeled twenty-five feet three inches prior to the collision.

Q. Now I asked you to make a statement so that you would have it for production here as to these stores and small stuff, and I show you a paper and ask you if that is a tabulated list made by you, or subject to your direction, of the stores and small stuff that were in the fore peak or lockers in the fore part of your vessel, which you referred to as being either lost or damaged or destroyed by the collision?

A. They have been lost, damaged, and used during the collision discharging cargo and handling ship.

Q. And each of those matters that you have referred to, were they brought about by this collision?

A. Yes, sir.

Q. What I am getting at is, would it or not have been necessary for you to have used or to have suffered the loss or damage to those things had this collision not happened?

A. No, sir.

Q. Now you may state, Captain, what those things were.

A. What they were?

Q. Yes.

(Testimony of M. B. Hansen.)

A. You want me to read them for you?

Mr. BRISTOL: Now if you will kindly hand that to counsel I will hand this other one, and they both can see. This has got prices on it, which I will have him testify to in a minute, but they both are the same set of items. I had him make a list of them so we would know what they were. (Mr. Bristol passed a copy to Mr. Minor and another copy to Mr. Wood.)

Q. This is an accurate statement, is it, Captain, of the various items?

A. Yes, sir.

Q. And does it, or not, contain anything in there that was not due to this collision?

A. No, sir; everything is due to the collision that is there.

Mr. BRISTOL: Now, I will offer that statement.

WITNESS: Let's see this. This says four sails and rigging been in the water. Cut that off.

Mr. BRISTOL: Strike that off of there?

WITNESS: No, let it stay there. It is right.

Q. But they haven't got that itemized on that other list?

A. No.

Q. Now with reference to these four ship's sails which you have itemized and which are not on the list with values on it, what did those four ship's sails consist of?

A. Very ordinary hemp canvas, hemp sails.

Q. Hemp sails. You had used them?

(Testimony of M. B. Hansen.)

A. Oh, we had partly used them. They had been there for eight years.

Q. They had been there eight years. What were they worth, Captain?

A. I don't know what they were worth. I don't know the price. I never priced them. You can leave that out. They had been wet and cleaned and dried again. That is all there is to it.

Q. Very well. Now did you ascertain the prevailing market price at the place of collision, or at the port nearest thereto, as to what the items that you have enumerated could be reproduced for, in like order and condition?

A. Yes, sir. This is what I have got here.

Q. That is what you have got there; and you may just give us the total amount.

A. Twenty-three hundred and eighty-four dollars and twenty-five cents.

Q. Now in your experience as a seafaring man I will ask you whether or not in the course of your years at sea you have had opportunity to inquire of and judge of the prices of such articles as are enumerated in the lists which you hold in your hand?

A. Yes, sir.

Q. And do you say whether or not the amount enumerated is the reasonable and fair value of the articles, or not?

A. The reasonable and fair value and what we used to pay in this very same place before, or any

(Testimony of M. B. Hansen.)

other place on this Coast; about the same thing; they may vary a few cents more or less, but about the ordinary rate at which we buy our stuff.

Mr. BRISTOL: We offer those two statements in evidence. Said two statements so offered were thereupon marked Libellant's Exhibits 13 and 14.

Q. Now how long, Captain, have you been a master of a vessel?

A. About twelve years.

Q. During that period of time where have you sailed generally?

A. All over the world.

Q. And during that entire time I will ask you how many years that has been?

A. About thirty years.

Q. How much?

A. This is as master, is it?

Q. Yes.

A. Twelve years.

Q. Twelve years as a master?

A. Yes.

Q. That is, for Wilhelmsen?

A. Yes.

Q. Now how long were you a master before you went to work for Wilhelmsen?

A. I wasn't master before.

Q. You weren't. You have always been in charge of Wilhelmsen's ships?

A. Yes, sir.

(Testimony of M. B. Hansen.)

Q. If it wasn't the "Thode" it was some other vessel?

A. Yes, sir.

Q. Have you ever had any collision before, or have you ever been tangled up with any other ship?

A. No, sir.

Q. In that entire time?

A. Never.

Q. Is there any other matter or thing regarding the facts and circumstances concerning which I have interrogated you that you have not fully answered, and if you have not you are now invited to make a statement in regard thereto?

A. No, I don't think so.

Q. You are under obligation, as I understand it, with your charterers and owners, to condition your ship and again go to work under your time charter as quickly as possible?

A. Yes, sir.

Q. And to do that, I understand you are about to depart going outwardly, so as to get these repairs and various things made at the lowest price you can obtain?

A. Yes, sir; the quickest time.

Q. In the quickest time, and, as I understand it, the lowest price and the quickest time for the benefit of all concerned and to reduce your damages, is at another port than the port of Portland?

A. Yes, sir.

Q. Is that correct?

(Testimony of M. B. Hansen.)

A. Yes, sir.

Q. So that at the time of trial you, in the course of your occupation, are not likely to be in the port of Portland?

A. No, not likely.

Q. And how about it with your crew? Have they been with the ship some time?

A. Yes, they have been several months.

Q. How long has Tallefsen been with your vessel?

A. He has been three years; I think pretty near three years.

Q. And how about Hansen?

A. He has been on three or four months.

Q. And how about Johansen?

A. About ten months.

Q. And how about Rasmussen?

A. About a year, isn't it, or fourteen months.

Mr. BRISTOL: Now, gentlemen, I have the surveys, but of course I can't prove those by the Captain. He has already stated whom he had to make them, and we will come to that some time later, to expedite it. I don't care which one wants to take him first, but go ahead.

Mr. MINOR: You go ahead.

CROSS-EXAMINATION.

By Mr. Wood:

Q. Captain, that I may understand clearly about your speed, you came on deck about 3:15 and you got under way about five minutes later?

(Testimony of M. B. Hansen.)

A. Yes.

Q. About 3:20?

A. About 3:20; exactly.

Q. And you started in on the slow bell?

A. Yes, sir.

Q. You ran your engine a couple of minutes or so on a slow bell before you got any headway, before you started?

A. Oh, yes; surely; two or three.

Q. Before you started out?

A. Two or three minutes before she ever started to move.

Q. And you then went under a half speed bell?

A. Half speed, yes, forward.

Q. How long had you been on the slow bell?

A. About five.

Q. About five minutes on the slow?

A. All together, see, from the beginning, and then about from three to five half speed.

Q. Half speed?

A. From three minutes to five.

Q. And in that time, under those two bells, slow and half speed, about how far did you go?

A. Oh, we could not have gone over three ship's length. I will call your attention to the fact it would take some time, too, to move a heavy vessel like her. And also when you first open up the engine and start you never get speed; even if you ring up half you don't get it. Of course, they want some time to start it.

(Testimony of M. B. Hansen.)

Q. Yes. Then you proceeded down stream and sighted the "Ocklahama," and what bells were you under then?

A. We were under half when we sighted the "Ocklahama"—the "Thielbek."

Q. Well, I mean the "Thielbek."

A. Yes, towed by the "Ocklahama." Of course, it was dark; I could not see the towboat. I saw her lights.

Q. You were then under half speed?

A. Yes.

Q. And she was about, I think you said fifteen hundred feet away?

A. Yes, about twelve or fifteen away.

Q. What lights did you see on her all told? You said you saw two red lights and what other lights did you see?

A. I saw the two red lights and I saw two small white lights.

Q. Which boat were they on?

A. On the towboat, I guess, which was towing her.

Q. They were towing lights?

A. Yes, towing lights. And I then saw her rigging, the upper part of her rigging.

Q. Did they have any range lights on them?

A. On her; no. You mean on the ship?

Q. Well, on the ship or the "Ocklahama"?

A. No, I didn't see any. The ship didn't have any.

(Testimony of M. B. Hansen.)

Q. Now how far were you away from the "Chinook" when you saw the "Ocklahoma"?

A. We were a couple of hundred feet.

Q. A couple of hundred feet. And how was the "Chinook" lying in the stream?

A. She was down, laying slantways of the stream, yes; crossways with her stern to the Astoria. That does not mean exactly across this way (indicating), but this way (indicating).

Q. Was her stern a little up-stream or down-stream as she lay across the channel?

A. Her stern was a litle up-stream.

Q. A little up-stream?

A. Yes, sir.

Q. Pointing toward the end, then, of the long railroad dock, or along about in there (indicating)?

A. Yes, about in there.

Q. Do you know anything about the width of the channel, Captain, where the "Chinook" was lying?

A. According to my chart it is about fifteen hundred feet.

Q. About fifteen hundred feet?

A. That is, from the banks to the wall.

Q. From the northern side of the channel to the docks?

A. Yes, sir.

Q. About fifteen hundred feet?

A. About fifteen hundred feet; yes, sir.

(Testimony of M. B. Hansen.)

Q. And how far would the bow of the "Chinook" lie from the northern side of the channel?

A. I should think it anchored clear, far enough off to swing around there.

Q. You don't know that?

A. I don't know that, but I should think she anchored far enough to swing clear.

Q. I know; that is just your guess, but what I mean is, do you know from your own knowledge?

A. No.

Q. About how far the "Chinook's" bow was from the northern side of the channel?

A. No.

Q. Do you know about how far the distance was from his stern to the Astoria docks?

A. About six or eight hundred feet; about eight hundred feet.

Q. When you saw the "Ocklahama" and "Thielbek" did you see them over the "Chinook" or in the clear?

A. Oh, no; I saw it in the clear.

Q. In the clear. The "Chinook" wasn't lying between you, then?

A. No.

Q. And how far away from the "Chinook's" stern did you aim to pass on your course?

A. About two hundred feet, one hundred and fifty to two hundred feet.

Q. One hundred and fifty to two hundred feet?

A. Yes.

(Testimony of M. B. Hansen.)

Q. About how far below the "Chinook" was the "Ocklahama" at that time? This is the time when you first sighted her.

A. First saw her?

Q. Yes.

A. I should think about twelve or fifteen hundred feet, three ship lengths, three or four ship lengths.

Q. And you traveled a little way after you sighted the "Ocklahama" before you blew your first signal?

A. Well, very little; a few seconds before he blew his two whistles and then he shortly stopped.

Q. Well, you had a little conversation with Nolan, I understood you to say, before you blew the first whistle?

A. No, no conversation whatever.

Q. Well, I must have misunderstood you. I thought you said on your direct examination to Mr. Bristol that you spoke to Nolan about there being a tow or something.

A. Well, I told him, "It seems to be a tow coming up, Pilot."

Q. That was before the first whistle?

A. Certainly, yes.

Q. Then a little after that you gave your first whistle?

A. About a few seconds he blowed the first two whistles. I quoted what I saw; that is the conversation when I first saw that.

(Testimony of M. B. Hansen.)

Q. You aimed then to pass in close to the Astoria docks with your boat?

A. That is what we did; yes.

Q. How far out from the Astoria docks was the "Ocklahama" and "Thielbek," do you think?

A. That I can't tell how far they were out. They seemed to be in mid-channel, about mid-channel, to me, mid fairway.

Q. Yes; you could not tell that very well?

A. I could not tell.

Q. And your green light you think was showing to them?

A. Yes, sir.

Q. You are sure of that?

A. I am quite sure; yes.

Q. I mean your angle was such that you know your red light would be shut out?

A. Yes, certainly.

Q. Can you tell what part of the Astoria docks you were headed for when you blew your first two whistles?

A. No, I can't. I don't know the name of the docks down there. That is impossible.

Q. How far apart are the masts on your vessel, Captain?

A. Well, I don't know. I never measured them.

Q. I don't mean down to a foot.

A. Well, let's see; they must be probably two hundred and twenty-five feet apart. That is guess-

(Testimony of M. B. Hansen.)

ing. That is absolutely guessing. I never measured them.

Q. And your range lights are one on each mast?

A. Yes, sir.

Q. Now did I understand you to say that you stopped your engines immediately at the first whistle, or Nolan did?

A. Immediately after the first two whistles, yes.

Q. Why did you do that?

A. The pilot gave me orders to stop the machine. I stopped her.

Q. Do you know why he did that?

A. He done that, I suppose, to slacken down the speed and to see what the other vessel was going to do, as she didn't answer the whistle.

Q. How long after the first two whistles did he give the order to stop his engine?

A. It could not have been very many seconds, because it wasn't very many seconds before he blew the second whistle.

Q. Now I want you to understand that I am not going to try and tie you down to ten seconds, or fifteen seconds, and I know it is all guess work.

A. Yes.

Q. And it gives a little better idea, just a rough idea, if you can say about how many seconds there would be in these things.

A. Well, you know we haven't got very many minutes. The whole work was only twelve minutes or so.

(Testimony of M. B. Hansen.)

Q. Yes. Now do you mean after the first whistle he would wait two or three seconds and then stop his engines, or what do you mean?

A. I will tell you, when I first saw the vessel or saw the rigging, I told him "there is a tow coming up there, Pilot." He says, "I see, Captain." And I walked back about three steps and got my glasses and walked back the three steps; that is six; and I do that in three seconds, don't I?

Q. Sure.

A. And I said stop, and he stopped right there. Then in the meantime he had blown two whistles.

Q. Two whistles again?

A. No, he blowed the first two whistles. I told him, "I see a vessel," and I walked there and back, six steps, and got my glasses. In the short time he blew the whistle. I come back to the telegraph and he stopped her.

Q. Stopped her?

A. Yes.

Q. Then how long after that did he blow the second two whistles?

A. I don't know. That I am not going to say. I don't know. Maybe four or five, or six; I don't know.

Q. Well, a very short time?

A. Right shortly afterward; yes.

Q. Four or five or six seconds, and at that time you were headed so you could clear the stern of the

(Testimony of M. B. Hansen.)

"Chinook," you think, about one hundred and fifty or two hundred feet?

A. Yes.

Q. And about how far up-stream from the "Chinook" were you up-stream?

A. Well, we were about, I should think, abreast of her stern.

Q. Abreast of her stern?

A. Yes. That is, you know what I mean. We coming this way, he was laying this way (witness illustrating).

Q. You mean you were just about on a straight line between her stern and the line of her keel prolonged where it would hit the shore?

A. No, no, no.

Q. Is that what you mean?

A. No, I don't mean that. Our bridge or 'midships was abreast of her stern, getting up toward her stern.

Q. Your bridge was about abreast of her stern?

A. Yes.

Q. Well, then, you were actually passing her at that time?

A. No, we wasn't passing her. We pass when we get up 'midships. We got up to her stern, and she is four hundred and fifty feet long, I think, almost.

Q. The bridge of your vessel, then, was about on a line drawn from her stern straight ashore, the

(Testimony of M. B. Hansen.)

shortest line you could draw, straight across the channel? Is that what you mean?

A. About that, I guess. Of course, I didn't—

Q. (Interrupting) All right. Then how long after the second whistle, which I understand was answered—

A. Yes.

Q. By the "Ocklahama"; that was answered right away, wasn't it?

A. Yes, I guess it was; yes.

Q. How long after that did you reverse, or did Nolan give the order to reverse the engines?

A. If I am not wrong he reversed them before he blowed the second whistles.

Q. Before he blowed the second whistles?

A. No; it probably was—it was probably afterwards, just in the same instant.

Q. About the same time?

A. The second two whistles, and then astern.

Q. That is, he reversed his engines full speed astern at the time of the second whistle or immediately after the second whistle?

A. Immediately after; yes.

Q. Did he give any whistles to indicate that he was reversing full speed astern?

A. No, he didn't give no three; he gave four short.

Q. When?

A. Immediately after his blowing astern.

Q. Right away after?

(Testimony of M. B. Hansen.)

A. Yes.

Q. And he gave the danger signal twice?

A. Yes.

Q. Did he give the danger signal twice in quick succession, or did he wait a little while?

A. No, right quick succession. He didn't wait any.

Q. Then it was almost eight blasts in succession?

A. No, no; separated. It was distinctly understood; it was separate blasts.

Q. Yes; just long enough to show they were separate danger signals; is that the idea?

A. Yes.

Q. When you noticed the "Ocklahama" and "Thielbek" down stream from you, Captain, you saw her topmasts over the town of Astoria; is that the time; or over the—

A. (Interrupting) Over the westerly part, or southwest—you see, the northwesterly part, it would be (witness indicating on chart). I could see her masts over the southwest.

Mr. BRISTOL: It is about Smith's Head about where you have got your finger there.

WITNESS: That is north, isn't it?

Mr. WOOD: Yes; I don't care what part.

WITNESS: I saw her rigging up above the northern hills of Western Astoria.

Q. Well, did you see the rigging over above

(Testimony of M. B. Hansen.)

the lights of the town and the docks, or down the river? That is what I want to know.

A. I saw them right on the edge of the bank, or side of the town, just over here (indicating).

Q. You see, I must explain to you, when you say "over here," it does not show in there.

A. Well, call it whatever you want, then. You use the name.

Mr. BRISTOL: Well, let's agree upon that. He points at Smith's Head here.

WITNESS: I don't know the name of it.

Mr. BRISTOL: This is known as Smith's Head, and it is opposite the vicinity between buoy number nine and buoy number eleven.

Mr. WOOD: I don't understand he means that exactly.

Q. I don't understand whether you mean down here, Captain, or up here you first saw her. You say you saw her, as I understand you to say, over Astoria. Now if we are down here you would not see her over Astoria at all.

A. There she is (indicating).

Q. All right. Now we have got an idea. Here you started the anchor up, here (indicating)?

A. Well, up here, I don't care where she was.

Q. Let's put her down here.

A. Now, I am on this boat here, which is low. She has got yards away up here; she has got yards and masts going away up to the clouds sometimes, when the clouds are low. Now, most likely this hill

(Testimony of M. B. Hansen.)

there is dark. The houses and the lights there (indicating). I could not see her hull.

Q. No; you saw her topmast.

A. I started to see her topgallant mast, or gallant mast or royal masts, and that is where I first distinctly saw a sailing ship coming up there. That is the time I said, "A sailing ship coming up there, Captain; a tow coming up."

Mr. WOOD: I will have you mark this a little later and do it all at the same time.

Q. Now when your vessel reversed her engines, did she lose her headway?

A. Yes, sir.

Q. You think she came to a dead stop?

A. I think, and I am absolutely sure she come to a practical dead stop, which could be proved by when we dropped the anchor at fifteen fathoms of chain we could turn on that spring slightly and it didn't turn out a link or an inch after that. It didn't pull that spring tight, as we will have to do to check it up when there is any speed on, you see.

Q. You came up very easy on your anchor?

A. Yes. I think he said after the collision he went and stopped it and pulled it tight, or something like that; and that is what makes me say I am convinced he was practically stopped.

Q. Did you come up on your anchor before the collision? Did you bring up on your anchor?

A. That is just what I am telling you.

Q. Well, you see, I can't make out whether you

(Testimony of M. B. Hansen.)

mean brought up before, or just at the time, or when?

A. No; I told you before.

Q. Well, how long was that then before?

A. I should think we were pretty near a good hundred feet, hundred and fifty, probably, when she stopped, away from the "Thielbek"; possibly two hundred.

Q. You say the man didn't put on the compression or spring?

A. Just slightly.

Q. Is it on a compression? Have you got a compression anchor gearing? How does it work?

A. What do you call them, compression? We call them—

Q. How does he fasten it when he doesn't want it to go out any more?

Mr. BRISTOL: He operates the chain by windlass, a brake band, steam windlass?

A. Yes, that is right.

Q. Can you put that on quick?

A. Yes.

Q. Then what did he do?

A. Put it on and ran away.

Q. Ran away; where did he go to?

A. Well, up on the deck, I suppose.

Q. He ran back to where you were?

A. Oh, no.

Q. Which way does your boat back, Captain?

A. She backs both ways. Sometimes she is

(Testimony of M. B. Hansen.)

cranky enough to go to the wrong side, sometimes not.

Q. Which way does she generally back?

A. Turns head to starboard, the rule is. Sometimes she turns the other way, too.

Q. The other way around?

A. Yes.

Q. How do you account for that difference in her action?

A. Well, vessels are like old horses sometimes. They just get cranky and do things they should not do.

Q. You can't explain, then, why she backs--

A. (Interrupting) No, I can't.

Q. (Continuing) one time to port, the other time to starboard?

A. No, that is true; sometimes we calculate on turning the head to starboard and she goes to port.

Q. She generally, though, backs with her head to starboard?

A. Yes, sir.

Q. Swings her head to starboard on a backing wheel?

A. Yes.

Q. Backing propellor?

A. Yes, she generally does that, but I never depend on her. When I want to do so I always rather have her swing that way first.

Q. You get her to swinging to starboard first, if you want to keep her swinging to starboard?

(Testimony of M. B. Hansen.)

A. If I want to be sure of it; yes.

Q. Now you said that Nolan gave the orders to you as to what he wanted done with the helm and you gave them on to the quartermaster?

A. Nolan gave me all orders and they were all executed or passed on by me.

Q. And you said, too, the orders were given so as to avoid a collision, but you didn't say in detail just what they were. I would like to know that.

A. It wasn't asked me.

Q. I know; that is the reason I am asking you. What were those orders, now? How was the helm put?

A. Starboard.

Q. From the time you started until the whistle?

A. From the time they started she was steering out of the fairway, going about a couple of hundred feet off of the "Chinook."

Q. Then you whistled. You sighted the "Ocklahama" and whistled?

A. No, no, no; not yet. You are going too fast.

Q. All right.

A. And steering along, and when we saw the "Ocklahama" we whistled. The helm was astarboard and was left there right along until she struck.

Q. Now how do you know that?

A. I know it because I told the man at the wheel to put her astarboard, and he kept it there

(Testimony of M. B. Hansen.)

and it was there, and it was astarboard when she was struck.

Q. Did you see the wheel?

A. Yes, sir.

Q. All the time?

A. No, not all the time; but I saw her then after she was struck.

Q. After she was struck?

A. Yes.

Q. After the collision?

A. But it was never straightened up.

Q. But you only know that from the way the wheel was after the collision?

A. I know it, for I saw the man turning the wheel the right way when I told him.

Q. You saw that?

A. I could see that.

Q. How far away were you from him?

A. Oh, it is about seven feet, I suppose.

Q. About seven feet?

A. Let's see. One, two, three steps; three steps and a half.

Q. The bridge is on the same level where the wheel is in the pilot house?

A. Yes, sir.

Q. And you were out on the bridge on the starboard side?

A. Here is the wheel here, and there is the telegraph on the side (witness illustrating).

(Testimony of M. B. Hansen.)

Q. Is that right, Captain? You were out on the starboard side?

A. I was out on the starboard side, yes.

Q. You were there all the time?

A. I was right there.

Q. Nolan was on top of the pilot house?

A. Nolan was on top of the pilot house.

Q. All the time?

A. All the time, right from the time she start until she struck.

Q. Now the wheel was put astarboard at the time of the first passing signal? Do you mean it was put two or three spokes over, or hard astarboard, or how was it put?

A. Ordinary astarboard, yes; not too hard. Probably a couple of spokes off to the side. They don't break it hard astarboard exactly.

Q. No; and was it put any more astarboard later on?

A. Just left on ordinary.

Q. What?

A. We call it hard astarboard. We never allow them to break it hard against the machinery; always leave a little clearing.

Q. Do you think then the wheel was nearly hard astarboard?

A. It was hard astarboard; practically called hard astarboard.

Q. How does that affect the backing of your vessel, Captain, the wheel hard astarboard, or nearly

(Testimony of M. B. Hansen.)

hard astarboard, and you reversing full speed astern, what does she do?

A. That is hard to tell.

Q. How long have you been on her now?

A. What?

Q. How long have you been on her now?

A. I got on her in May.

Q. And before that?

A. I have been on her a year before.

Q. And you can't tell how she backs?

A. No, I can't. It may affect her both ways, and it may have no effect at all.

Q. If her helm is astarboard, or helm to port, backing, you can't tell which way she would go?

A. No; it may affect the same and it may not.

Q. Now when your helm was put hard astarboard that night at the first whistle did you notice the head of your vessel?

A. Yes.

Q. Did it swing?

A. Yes, it swung a little. Yes, surely; she answered the helm.

Q. She answered her helm?

A. Yes.

Mr. BRISTOL: You mean now when he is going ahead?

Mr. WOOD: I mean when he is going ahead, at the first whistle.

Q. She answered her helm?

A. Yes, sir.

(Testimony of M. B. Hansen.)

Q. And how far did she swing to her own port?

A. Well, I didn't see it. I can't tell how far she did swing.

Q. Well, she swung a little?

A. Yes.

Q. That is as near as you can say?

A. Yes.

Q. Did she continue swinging that way?

A. Her anchor was dropped and—what are you speaking of now—before anchoring?

Q. Yes, before anchoring.

A. She was stopped and she was laying pretty near still.

Q. No, that is not what I asked you. You said at the first whistle the helm was put nearly hard astarboard and the vessel began to pay off to port?

A. Yes.

Q. That is right. You can't say how much she did pay off to port?

A. No.

Q. But she paid off a little?

A. Yes.

Q. Then at the second whistle, which was a few seconds later, she was still paying off to port?

A. I didn't watch her.

Q. What were you watching?

A. I was watching ahead.

Q. On what?

A. On the ship coming.

Q. You were watching the ship coming?

(Testimony of M. B. Hansen.)

A. Yes.

Q. You were not watching your own vessel?

A. Yes, I was watching her, but I didn't notice the way she was swinging. I had no compass there, and I didn't take no mark then on the land or on the wharves at all. I don't know how she was coming.

Q. When you reversed your engine did that affect her swinging one way or the other?

A. She swung about a half point to starboard.

Q. She swung about a half point astarboard?

A. Yes.

Q. And that was after the anchor dropped, or before?

A. That was after the anchor was dropped.

Q. Did she swing to her own starboard on reversing her propellor before the anchor was dropped?

A. No, she didn't. It don't swing right away. It takes some time to start her to swing.

Q. Sure; you have got to steady her and swing her back; is that what you mean?

A. No, I don't mean that.

Q. What do you mean?

A. I mean when a vessel is laying still and you start to back them, as a rule they swing astarboard, but they don't swing right away. They take some time. A propellor backing don't affect them until after a while. And at this instant we had a chain

(Testimony of M. B. Hansen.)

out on the port side, and that also held her back, you see.

Q. It was your port anchor that was down?

A. Yes, sir.

Q. That kept her from swinging to starboard?

A. Yes.

Q. Now I may have asked you this, but I have forgotten. How long do you think it was from the time your anchor was down to the collision?

A. Oh, it was only a couple of minutes, I suppose. Yes, I think so.

Q. And your anchor was down how long after the danger whistle?

A. It was down shortly after the second—oh, the danger whistle?

Q. Yes.

A. Before the danger whistle.

Q. Before the danger whistle?

A. Yes, sir; shortly after the second number two, two whistles.

Q. Yes.

A. And before the first four whistles.

Q. Then it must have gone down very quickly after the second whistle?

A. Yes, sir.

Q. Because, as I understood you to say, the danger whistle was blown almost as soon as you got the answer from the "Ocklahoma"?

A. Yes; I don't think over a couple of seconds to let her go down.

(Testimony of M. B. Hansen.)

Q. Well, am I right—and I don't want to get this wrong—am I right in saying that the danger whistle was blown right after you got the answer from the "Ocklahama"?

A. The two whistles; well, it was after, right after; but I am not going to say how long it was after, because I don't know.

Q. Well, to the best of your judgment?

A. No, I am not going to say that, because I don't know.

Q. Well, you can give your best idea, Captain?

A. I can't give you an answer that way better than I have given you.

Q. Now, Captain, I tell you it is all guesswork, and I am not going to work on any other theory than it is an estimate of time, but I am entitled to have your estimate, or else I will have it noted here you won't answer.

Mr. BRISTOL: He says he didn't hold a watch on it, and he says he can't estimate it, and I don't suppose you can force him to, for that matter. He has a right of opinion as to what he saw there, and if he can estimate it I have no objection; but he says he doesn't want to make any such calculation; he doesn't know. Now that is all there is to it.

Q. Well, what did you do, Captain, between the answer from the "Ocklahama" and the danger whistle from your boat?

A. I was standing by on the telegraph and

(Testimony of M. B. Hansen.)

doing, fulfilling the orders of the pilot, acting according to his instructions.

Q. What were they?

A. They were stop, full speed astern, and—

Q. (Interrupting) I am now talking about after the second whistle.

A. After the second two blasts?

Q. Yes.

A. All right. We stopped; then she was stopped then already, of course, and we backed full speed.

Q. Well, you said before that you were backing full speed before the second whistle?

A. No, I didn't, did I?

Q. Yes.

A. I said we blowed two, then we blowed two more, and then we stopped; then we backed, then we blowed four. Is that what I said?

Q. No, I don't think you said that before, but if that is the way you want it now, we will have it that way.

A. Well, it is such a short time, and such a short few seconds that I guess you have got these seconds given as near as I can, and if we backed her before the four blasts or just afterwards, that is pretty hard to say; but if I said it was after the first time, let it stand as it was the first time. That is all there is to it.

Q. And you can't estimate the time between the second whistle and the danger whistle?

A. No, I can't.

(Testimony of M. B. Hansen.)

Q. Except to say that it was a very short time?

A. Yes.

Q. Now, Captain, can't you give me any idea as to the angle that you were approaching the "Thielbek" when you first saw her? You said she was off to your starboard side?

A. Yes, she was about a half a point on the starboard bow. That is an angle of five or six degrees, isn't it; about that.

Q. I don't know, but I will ask you to take one of these white sheets of paper and mark roughly the angles of approach and where the "Chinook" was lying and where the "Thielbek" was, and where you were, just roughly.

A. I am not much of a drawer. I don't think I care about that. Haven't you got a map there? You have one of my drawings before.

Q. Well, I would rather have you mark it. Let him take a piece of paper here, and lay his charts there, and figure on it for five minutes. Won't you?

A. Give me that over there (indicating). That is mine.

Mr. WOOD: No, I won't.

WITNESS: That belongs to us.

Mr. BRISTOL: Let him have the diagram. He knows what he is doing. I invited you to examine him about that.

Mr. WOOD: Sure. Did you make that yourself?

WITNESS: No, but somebody—

(Testimony of M. B. Hansen.)

Mr. WOOD (interrupting) : Well, then, he is not entitled to it, Mr. Bristol.

Mr. BRISTOL: Let him tell about it, if he wants to.

Mr. WOOD: I object to the witness looking at that until I have examined him without the aid of it.

WITNESS: I gave that to Mr. Bristol.

Mr. WOOD: You can have that afterwards, if you want to.

Mr. BRISTOL: All right.

Mr. WOOD: Q. Now, I would like to have you mark there, any way you like, the approximate courses and the approximate distance of the "Chinook."

WITNESS: I can't do it.

Mr. BRISTOL: The witness offers to use a tracing which was prepared for the purpose of showing the relative positions with respect to the buoys, with respect to the ship channel, and with respect to the positions of the ship, as made up as near the time of the accident with the information then before him, as he could make it, and from knowledge then acquired as he could acquire it, and we offer to exhibit that to counsel for the "Thielbek" and understand he refused to allow the witness to use it or to use it himself.

Mr. WOOD: I would like to incorporate in the statement that the drawing offered was not made by this witness, and that all I ask him to do now is to mark the approximate angles of approach of

(Testimony of M. B. Hansen.)

the "Thielbek" and the "Fagelund," which the witness refuses to do.

WITNESS: I am not refusing. I say I can't do it.

Mr. BRISTOL: The witness doesn't refuse to do it. The witness has a right to refresh his recollection from any information that he has at hand, based upon the circumstances at issue, and with that recollection refreshed he can make any diagram he wants to. We offer to allow him to refresh his recollection in regard to the circumstances in hand, covered by the testimony, but it is unreasonable to expect a man to carry it in his head as to fractions of time, courses of ships at three o'clock in the morning, to be platted upon a chart to be used for purposes of cross-examination. Now we want you to have everything that you can have, Mr. Wood, but I think that you are a little bit arbitrary with this witness.

Mr. WOOD: I will ask to have it noted, the witness is offered a pen, white sheet of paper, and asked to mark simply the approximate angles of approach at the time of the first whistle of the "Fagelund" and the "Thielbek" and her tug, which the witness refused to do.

Mr. BRISTOL: Under the objection and advice of counsel that it does not call for the witness' knowledge of such positions, and does not call for his knowledge of the circumstances upon the ground, and is not proper cross-examination.

(Testimony of M. B. Hansen.)

Q. (Mr. Wood) Now, Captain, did you and Captain Nolan have any discussion that night as to whether it was proper to back your vessel, or not?

A. No, we had not.

Q. You are absolutely sure of that?

A. We had no conversation if it was right or proper to back the vessel. We had no conversation to that effect. But I understand you are pointing to something that has come to your ear; that is that when Captain Nolan told me to "back her full speed, Captain." "All right, sir. She may turn on you, pilot," I said. "I know it, sir," he said, "but it can't be helped"; or he said, "Maybe it can't be helped." That is all the conversation.

Q. What did you mean by saying, "She may turn on you, Captain"?

A. I meant the same as you want me to say sometime ago, she don't always swing astarboard when you back her.

Q. She does as a rule?

A. That is what I meant; yes, sir.

Q. She does as a rule swing to starboard?

A. Yes, sir.

Q. And that is all the conversation you had about it?

A. That is all we had, and that is all we spoke to one another until we finished, and Nolan was a little worried or upset, and I said, "It is no use to worry." And I also heard that somebody said there had been a row between us and the pilot, but you

(Testimony of M. B. Hansen.)

may state that is absolutely false. There was no such a thing.

Q. Your idea in saying to him that "she may swing on you," being that she might swing to your starboard?

A. Yes.

Q. And across the course of the "Ocklahama" and tow; is that it?

A. Well, no, not at all. My idea was to tell him, as I knew the vessel better than the pilot does. I always give him the pointers on that.

Q. Sure.

A. That is what I told him. I wasn't thinking of crossing or swinging into any boat's bow.

Q. You had given a signal and received one so that you were going to pass the "Thielbek" starboard and starboard, wasn't it?

A. Yes, sir.

Q. That was the signal. So that if your vessel did swing to her own starboard, as you feared she might, on a reversing propellor, she would swing toward the course of the "Thielbek" and "Ocklahama"?

A. Yes; and she did, about a half a point. I told you that.

Q. And Nolan said to you, "I can't help it"—what did he say?

A. "She may," he says, "but it can't be helped, Captain." "She may," he says, "but it can't be helped."

(Testimony of M. B. Hansen.)

Q. Did he say anything else?

A. That is all.

Q. Did he say anything else about, "I have got to get her headway off," or anything like that?

A. He didn't say that. He may have said that, but I didn't hear it, of course.

Q. I mean did he say it to you?

A. He probably said it.

Q. What, Captain?

A. Probably he said so, but I didn't exactly recognize it, anyway. That certainly was his intention to back the ship and get the headway off. That wasn't necessary to say.

Q. Captain, at the angle of approach that you were nearing the "Thielbek" at the first whistle, about how far apart do you think your range lights would appear to them?

A. How far apart?

Q. Yes; how wide apart would they look to the "Thielbek" at the angle you were going?

A. She looked to be a half point on our bow, didn't she?

Q. Yes.

A. Then it would look just that much of an angle to them; see?

Q. Yes. You saw the green light and the red light shut out shortly before the collision, you said, didn't you, Captain?

A. Yes, sir.

(Testimony of M. B. Hansen.)

Q. Where did the collision take place in relation to the "Chinook"?

A. I calculate the bridge, the 'midships bridge, that is the wheel, the bridge, was about abreast of the "Chinook's" funnel; that is abaft the "Chinook's" bridge. The "Chinook" was then swung up the river, straightened up.

Q. Straight up?

A. Almost; yes.

Q. She had swung a little more on the flood?

A. She was swung there according to the tide, as though she run there.

Q. And about how far off were you from her then at the time of the collision?

A. From a couple of hundred feet; two hundred feet.

Q. Do you know anything about the headway of the "Thielbek"?

A. No.

Q. You don't know anything about that?

A. I don't know anything, but we felt it. I know what we seen and felt. It must have been pretty good, the way she cut into us, the way she hung up. She hung herself up on our bow.

Q. Captain, who did prepare this sketch that you wanted to use?

A. I really don't know who prepared it, but the pilot gave it to me and he hasn't got it.

Q. Nolan gave it to you?

(Testimony of M. B. Hansen.)

A. Yes; to tell you the truth, although we didn't ask for it.

Q. I know you are telling me the truth without my asking you to do it all the time; at least, I hope you are.

A. To the best of my knowledge; to the best of my remembrance.

Q. This is the same as that other one, only it is my own copy. Now, I want you to mark on here the relative positions of the boats. You can mark first your point where you lay at anchor, as near as you can. Now before you do it, Captain, I want to call your attention to the scale, which is—

A. (Interrupting) One to twenty thousand there, too?

Q. That is what I was going to look at. No, this is a different scale.

A. The same thing.

Mr. BRISTOL: The same blue print, one to twenty thousand feet.

Mr. WOOD: Now that scale is here. But here is evidently the accurate scale. There is a thousand feet, and there is two thousand feet.

WITNESS: That is right.

Mr. BRISTOL: It must be one to two thousand feet, but it says twenty thousand there.

Mr. WOOD: Yes.

WITNESS: That is two thousand. That is the right scale.

(Testimony of M. B. Hansen.)

Mr. WOOD: That is one thousand from zero (indicating).

WITNESS: Yes. Down there is fifteen hundred; see?

Mr. WOOD: Yes. Now I will show you this blue print, identified by the signature of J. F. McIndoe, Major Corps of Engineers—

Mr. BRISTOL (interrupting): Number L. C. R. 186.28, isn't it, just the same as the other?

Mr. WOOD: Yes.

Mr. BRISTOL: L. C. R. 186.28; the same blue print you had before.

Mr. WOOD: And you can mark there again as you did on the other chart, your location at anchor near the flash buoy. If you want to, you can mark this scale on a piece of paper here and use it to measure by. I think it will help you to mark it more exactly if you want to do it.

WITNESS: Do you think I am going to do that for you? I will let you do that.

Mr. WOOD: All right; just as you like, Captain?

WITNESS: You ought to have brought up a pair of dividers along with you. What do you want to know next?

Mr. WOOD: First mark this, with counsel's permission, A, point at which "Fagelund" lay at anchor before getting under way. Now mark about where the "Chinook" lay, Captain, and also about her angle.

(Testimony of M. B. Hansen.)

WITNESS: I want that other one to look at. Fetch me that copy over there.

Mr. WOOD: Which other one?

Mr. BRISTOL: He means the tracing.

Mr. WOOD: I don't want him to look at that. He didn't make it, Mr. Bristol, and I object to it.

Mr. BRISTOL: I understand that, but it was prepared about then, and he wants to refresh his recollection.

Mr. WOOD: He can look at it afterwards. He is not entitled to refresh his recollection.

Mr. BRISTOL: I think he is. I offer it to the witness to allow him to refresh his recollection.

Mr. WOOD: I will let him look at it afterwards, any time.

WITNESS: Oh, keep it; keep it; keep it; keep it.

Mr. WOOD: I am going to.

WITNESS: Put that in your pocket, if you want to. I am not begging you for anything like that. If you like to keep it, go ahead, Mr. Wood.

Mr. WOOD: Q. Is this it, Captain (indicating)?

Mr. BRISTOL (interrupting): Show him where the O. R. & N. Dock is.

Mr. WOOD: That is the railroad dock; and that is the long O. R. & N. dock, to my knowledge (counsel indicating).

WITNESS: The "Chinook" was off there (indicating).

Mr. WOOD: If I don't mark this angle correctly, stop me. Is that about right, a line about like that.

(Testimony of M. B. Hansen.)

A. Yes, about that; yes.

Q. She would not be that long, would she?

A. Sure she is. Oh, that is about right. That is five hundred feet.

Q. About like that (indicating)?

A. Yes.

Mr. WOOD: With counsel's permission I will mark that. "B" is the position of the dredge "Chinook" as the "Fagelund" approached her going down stream. Now mark—

Mr. BRISTOL (interrupting): Well, I won't consent to that at all. That is the position that the dredge Chinook was anchored in.

Mr. WOOD: Yes.

Mr. BRISTOL: But he didn't say, and you didn't ask the witness if that was the position that the "Chinook" was in when the "Thode Fagelund" passed her.

WITNESS: Oh, no.

Mr. WOOD: Well, Mr. Bristol, when was it?

Q. What was her position, Captain, as you approached her?

A. This was the position she had when we started.

Mr. BRISTOL: That is a vastly different thing than you stated.

Mr. WOOD: "B" then is the position of the "Chinook" when the "Fagelund" left her anchorage.

Mr. BRISTOL: That is all right.

(Testimony of M. B. Hansen.)

Q. (Mr. Wood) Where was the "Thielbek" at this time, Captain, or don't you know?

A. At this time I don't know where she was.

Mr. WOOD: I see. Well, then, we will have this marked Claimant's Exhibit 1.

Said paper was thereupon marked Claimant's Exhibit 1.

Mr. WOOD: Here is a copy of the same chart, Captain.

WITNESS: Well, I want to have that, and have the same place.

Mr. WOOD: All right. Now mark again on this second chart I show you, your position at anchorage again. This time I want you to mark the position of the "Chinook" as you got down close to her at the first whistle.

WITNESS: The first whistle?

Mr. WOOD: Yes.

WITNESS: You are asking too much.

Q. Why, Captain?

A. Do you expect me in that short time to follow that old "Chinook" as she was swinging degree by degree, the first whistle, the second whistle, third whistle, fourth, in two minutes?

Q. No. I think, Captain, her position was approximately the same.

A. Approximately.

Q. You would not mark it and consent to it being the same; that is the reason I offered the second chart.

(Testimony of M. B. Hansen.)

A. No. This is when we started there.

Mr. BRISTOL: "This is when we started there"; you refer to Claimant's Exhibit 1, where you marked the position the dredge was in when you were at your anchorage?

A. Yes.

Mr. BRISTOL: Is that right?

A. Yes.

Q. (Mr. Wood) Now mark the position she was in at the first whistle.

A. I will give you, not the first whistle.

Q. Well, when?

A. I will give you the position she was about the time we were abreast, getting near around her stern.

Q. Before the first whistle?

A. Don't talk about whistles.

Q. Don't you know, Captain, anything about the whistles?

A. Yes, I do know all about them.

Mr. BRISTOL: He has told you he can't mark them, and every time he tells you why he tells you he can't and won't undertake to mark it every minute of time, progressing by signals or whistles, to give you the position of that dredge "Chinook." In the first place, the position of that dredge "Chinook" geographically located, with respect to the maritime practice in this case, is altogether without any issue.

(Witness marks on chart.)

(Testimony of M. B. Hansen.)

Mr. WOOD: What is that position, Captain?

A. That is not a position.

Mr. BRISTOL: What do you want, an eraser?

WITNESS: Yes; I want a rubber.

Mr. WOOD: It is perfectly obvious the "Chinook" would not swing, so he could mark it definitely from that.

Mr. BRISTOL: Why, it is not any such thing.

Mr. WOOD: Between the anchorage and first whistle she would be practically the same.

Mr. BRISTOL: It is no such thing, because the fact of it is at the time the "Chinook" was in that position she was when the collision took place, was entirely different to where the Chinook was at the time of the anchorage, and it is perfectly obvious that you are wrong in the statement that you make.

Mr. WOOD: What have you got there, Captain?

A. That is about how she laid when we were struck by the "Thielbek."

Q. All right. Where were you and where was the "Thielbek" at the collision, then?

A. There were the two of us, right there (indicating).

Mr. BRISTOL: And he marks two dots on Claimant's Exhibit 2, I suppose it will be.

Thereupon at the request of counsel said paper was marked Claimant's Exhibit 2.

Mr. WOOD: On Claimant's Exhibit 2, "A," point where "Fagelund" left her anchorage. "B," position of Chinook at the time of collision.

(Testimony of M. B. Hansen.)

Mr. BRISTOL: And the two dots there, relative points of the collision.

WITNESS: The bows; I call that the bows of two of them.

Mr. WOOD: "C," the position of the bows of the "Thielbek" and the "Fagelund" at the collision.

WITNESS: That is about right.

Mr. WOOD: About right. I don't expect this to be exact, Captain; it illustrates your testimony.

Q. Captain, I am going to show you again Claimant's Exhibit 1 and ask you to mark there the approximate location of the "Thielbek" when you first saw her. You pointed to it once before somewhere in here, and I want it just—

A. (Interrupting) I could not give you any good judgment.

Q. This is when you first sighted the "Thielbek." Do you want to use the scale?

A. I said fifteen hundred feet. I am going to give you that.

Q. All right.

A. That is fifteen.

Q. That is twenty-five.

A. Oh, I beg your pardon; so it is. Then I got that scale wrong on the other one, then, absolutely.

Q. Well, you can correct it. I will let you correct it later.

A. That is fifteen hundred feet. That should only be ten.

Q. What?

(Testimony of M. B. Hansen.)

A. That should only be ten over there (indicating).

Q. Well, you can change that, if you want to.

A. That is where we were laying at anchor, is it (indicating)?

Q. Yes.

A. That is where we were laying at anchor, is it (indicating)?

Q. Yes.

A. Well, that is ten—no; that is all right; that is ten. It should be a little more; eleven.

Q. No; I think that is fifteen, Captain.

A. No; this is fifteen here (indicating).

Q. Yes.

A. Well, we were laying at anchor, of course; then we hove up and we were about there when we started, and then when we start to go ahead she was about three hundred feet further ahead, about there (indicating).

Q. Now according to your location of your anchorage on your Claimant's Exhibit 1, Captain, according to the scale, haven't you got it too far away from this gas buoy, because you were just within about a ship's length?

A. That may be, too. That is why we should have one of these things to measure it.

Q. Well, you can measure with a paper, and I tell you it is only approximate.

A. Well, if we had that we could do it. You brought along a chart; why didn't you bring some

(Testimony of M. B. Hansen.)

other things along? I know very well the mate said she was just laying near enough that barge to swing good and clear of it.

Q. Well, let's fix it right, then.

A. Of course, the "Chinook" must have been laying further over this way, as well.

Q. Well, you want to change the point "A" here, do you?

A. You know, there is no use doing guesswork on a chart like this. I am only going to—I give you a wrong idea. It is only guesswork and you get a wrong idea, and it is not the thing to put it up, unless you put it up proper.

Q. I know, Captain, but I am entitled to have your best judgment.

A. Yes, and I am entitled to have proper tools to work with.

Q. You can measure it off on the scale.

Mr. WOOD: Mr. Bristol, I think you ought to request him to do that.

Mr. BRISTOL: The witness offered you a plat, in which he could give you all about it and get what you are after.

Mr. WOOD: I am going to let him have the plat after we get through.

Mr. BRISTOL: Yes, but you are desiring the witness to take a plat and mark positions for you under your own interpretation of the facts. The witness offers, and I offer for the witness, to produce to you, governed by the circumstances within the memory

(Testimony of M. B. Hansen.)

of all those who participated on our side, an actual plat of the position of the vessels at the times you are interrogating the witness about.

Mr. WOOD: You can offer that plat in evidence when you re-direct him, if you want to; when you examine him on re-direct.

Mr. BRISTOL: We will offer it to you now, in view of your insistence that he ought to be directed.

Mr. WOOD: Well, I don't want it.

Mr. BRISTOL: Well, I understand, but I want to get that in, in view of your statement to the Court.

Mr. WOOD: Here is a government chart I want him to mark on, and you offer a scrawl made by Nolan.

Mr. BRISTOL: No, I haven't offered anything. I have offered it to you.

Mr. WOOD: Well, mark then, Captain, the position of the "Thielbek" when you first sighted her.

A. Well, we will put that down here, then (indicating).

Mr. WOOD: All right; about there (indicating). Claimant's Exhibit 1, "C," position of "Thielbek."

Mr. BRISTOL: No; approximate position, the witness says.

Mr. WOOD: Approximate position of the "Thielbek" when he first sighted her. And mark your approximate position when you first sighted her, Captain.

WITNESS: (After marking) I want to get in

(Testimony of M. B. Hansen.)

line so I can see; that is all. The next time you do this, Mr. Wood, you bring your—

Mr. WOOD: Dividers?

WITNESS: Your dividers, and your straight edge, and so on, so I can do some work.

Mr. BRISTOL: We would also like to have a protractor, too.

WITNESS: Yes.

Mr. BRISTOL: Mr. Wood brought his chart, but didn't bring his tools to work with.

WITNESS: I draw that too long. (Witness erases.) Remember, I want to say that is going to be so I can see that side of her.

Mr. BRISTOL: Referring to the port side.

Mr. WOOD: Of the "Thielbek."

Mr. BRISTOL: And the "Ocklahama" too.

Mr. WOOD: He means that the "Thielbek" and "Ocklahama" should be located on this chart at such an angle that he could see their red light.

Mr. BRISTOL: Without looking over the dredge "Chinook."

Mr. WOOD: Yes. And the point "D" marks the approximate location of the "Fagelund" when you sighted the "Thielbek."

Mr. BRISTOL: No. I would call it the line "D". He made quite a long line there, so as to show he would have a relative position that would represent the ship.

Mr. WOOD: Is that right, then, Mr. Bristol (drawing)?

(Testimony of M. B. Hansen.)

Mr. BRISTOL: Approximately.

Mr. WOOD: Goodness! Mr. Bristol, you think that—

Mr. BRISTOL (interrupting): No, I don't think anything, but you have had an opportunity I didn't have. I don't want to be unprofessional with you. I want you to get down all the facts; but you were on the ship and interrogated this witness as a representative of The Port of Portland.

Mr. WOOD: No, I didn't, anything of the kind. "D" represents the approximate position of the "Fagelund" at the time he sighted the "Thielbek."

Mr. BRISTOL: On Claimant's Exhibit No. 1.

Q. (Mr. Wood) Have you taken out all of your cargo, Captain?

A. Yes, all of it.

Q. Every bit of it?

A. Yes.

Q. Then you could put your boat on the dry-dock here in Portland, couldn't you?

A. According to a letter I got from the dry-dock people they seemed to get cold feet and afraid of docking anything almost.

Q. You said the reason they would not let you dock her was because they would not dock vessel with cargo in, and now you say the cargo is all out.

Mr. BRISTOL: Yes, but you forget the bunk of coal, Mr. Wood.

Mr. WOOD: Don't make suggestions to the witness, Mr. Bristol. You can re-direct.

(Testimony of M. B. Hansen.)

Mr. BRISTOL: Well, you go ahead, now. You keep to your cross-examination and we will get along better.

Q. (Mr. Wood) When you said the "Fagelund's" bow was bent to starboard by the collision, what did you mean, Captain? Did you mean her plates were shaped in to starboard, or that your vessel was pushed around to starboard?

A. I meant, I answered the question, she was put in; that the stem and the plates and the bow was bent to starboard.

Q. You don't mean your stem was swung around to starboard by the blow?

A. Swung?

Q. Yes.

A. Changed in position, you mean?

Q. Yes.

A. No, no; I didn't mean that at all.

Q. I just wanted to get your meaning there.

A. I meant what I said. I didn't say it swung around to starboard; I said it was bent to starboard.

Mr. WOOD: I know you did, but I didn't know what you meant. I think that is all.

CROSS-EXAMINATION.

By Mr. Minor:

Q. Captain, I want to ask you a few questions, very few.

A. Yes, sir.

(Testimony of M. B. Hansen.)

Q. How far do you think you anchored above the "Chinook"?

A. In the evening, you mean?

Q. Yes.

A. In the evening?

Q. Yes.

A. Oh, I see. We anchored up there about twelve hundred feet; three or four ship lengths, we call it.

Q. All right; I didn't want it exactly. Now that evening, as I understand, when you anchored your ship, after you anchored, you turned and faced upstream?

A. Why, yes. Yes; the tide was going out.

Q. How was the "Chinook" at that time, do you know?

A. Really, to tell you the truth I didn't notice. I didn't know the "Chinook" was there coming down, with all the lights on the wharf and so on; so I didn't know she was there until the morning.

Q. When you left your anchorage the next morning in what direction was your boat lying?

A. Head out.

Q. Does that mean head out (indicating)?

A. Yes.

Q. How was your stern?

A. Stern up. That is, she was practically laying in the line of the fairway on account of we were a deep vessel; flood tide would affect us before a light ship.

(Testimony of M. B. Hansen.)

Q. I understand. Your ship, then, was lying with her head toward the incoming tide?

A. Yes, sir.

Q. And the "Chinook" at that time had not been influenced so much by the tide?

A. No, sir.

Q. Not so much at that time?

A. Of course, she was light.

Q. But she was lying only partially up?

A. Yes, slanting.

Q. When you passed the "Chinook" the "Chinook" then had turned still more with her head down-stream and her stern up-stream?

A. Yes. We never passed her.

Q. I mean when you got abreast of her, then.

A. Yes, when we got to the point of the collision, then she was straightened up; yes.

Q. She was straightened up more?

A. Yes. This was twelve minutes later, you know, and that was the tide coming in and she straightened up more.

Q. What was the object of dropping anchor, Captain? I don't understand you.

A. The object of dropping the anchor was only to stop the little bit of speed that was left on the ship and try to avoid a collision, as the Pilot Nolan saw that the ship was going to run into him.

Q. When you dropped your anchor then you still had some headway?

A. I dare say a wee bit left, yes; although we

(Testimony of M. B. Hansen.)

had backed for two minutes, good two minutes with full force, had full pressure on.

Q. So the object of dropping the anchor was to prevent any further headway?

A. Certainly; yes; and in this case backing, it also prevented her to swing.

Q. Prevented swinging also?

A. Any more. If it swung more, well, we would have got a blow somewhere else, farther aft, right in the foremen's forecandle.

Q. About how far do you think you anchored from the shore?

A. That is very hard to tell, Mr. Minor.

Q. I know that, but about how far would you estimate it?

A. An estimate is no value whatever. I printed on the chart so far from the bow, and so on. Then there is a made bank there, and the light is on the wharf. I didn't see the wharves until the next day.

Q. Well, if you cannot estimate it, just say so.

A. No.

Q. I don't care.

A. No, I can't estimate it.

Q. And you did say, I believe, that you think that from the stern of the "Chinook" to the dock was about how far, six hundred feet?

A. Six or eight, I think I said; yes. Then the water down there, that is a different calculation when you have a ship from a wharf. That is better calculated down there. Farther up it is wider.

(Testimony of M. B. Hansen.)

Q. I understand you didn't see the "Ocklahama" the night before at all?

A. Not at all. Yes, I beg your pardon; I saw her coming down. We passed her coming down. She come down with a schooner and put her anchors over in the bay, after, behind us. But I never saw her coming down to Astoria.

Q. You passed her as she was coming down and you were going up?

A. Yes. She was taking her tow out and we passed her going up; yes, sir; going up the river.

Q. Now you say there was one red light on the "Thielbek" and one red light on the "Ocklahama"?

A. Yes, sir.

Q. You remember those, do you?

A. Two red lights there, I remember very well. I noticed one on the towboat, as I knew it was a towboat. It was higher up than the one on the sailing ship.

Q. Now, Captain, in giving your orders to your crew do you use the Norwegian system or the American system?

A. We speak Norwegian to the Norwegians, and English to the English.

Q. What I mean is this: I have understood from some other experiences I have had that Norwegians use a different system from Americans. In other words, when you say port in America that same order given to Norwegians would be just the opposite, starboard; understand?

(Testimony of M. B. Hansen.)

A. Well, I never sail in American ships; I sailed in English, and so I can't say anything about your American orders.

Q. That is, what I understand is this; this is what I want to get at: I understand when you want your ship to go to starboard you then in America would say "port."

A. Yes, in deep water ships.

Q. In deep water ships and all, I understand; but in Norwegian when you want the ship to go to starboard you say starboard.

A. Do we?

Q. Well, that is what I understand. I want to know whether that is the fact or not?

A. In Norwegian ships I have been in, and the one we have now, when we want her bow to go to starboard we say "port."

Q. You say port?

A. Yes. We turn the wheel to starboard—the bow to starboard and the rudder to starboard; everything goes to starboard.

Q. I recently had, Captain, a collision case where there were a good many Norwegians on both ships, and some point was made to the effect that the Norwegians might misunderstand orders given by the Americans, who were captains, the pilots; so there was nothing of that kind in your system?

A. No, sir, there ain't. No. I don't see what kind of Norwegians you got hold of, anyway, that time.

(Testimony of M. B. Hansen.)

Q. Well, I don't think the Norwegians testified to that, but that is what I understood was the claim. You see what I mean now?

A. I understand you perfectly well.

Q. I just wanted to see if your signals are the same as they are in America.

A. Well I understood that was the international rule for American as well as Norwegian and English; that is, in open sea. There might be some exceptions; I don't know.

Q. But when you want your ship to go to starboard, then you say "port"?

A. I holler "port"; yes.

Q. And if you want your ship to go to port you say "starboard"?

A. Yes, always.

Mr. MINOR: That is all I want.

Mr. BRISTOL: Any more, Mr. Wood?

Mr. WOOD: I want to ask whether he has made report to the Captain, and I want to look at the engine room book.

Mr. BRISTOL: He has the engine room and the whole shooting match, ship and engine room and everything, the engine room log and everything.

REDIRECT EXAMINATION.

By Mr. Bristol:

Q. Now, Captain, I show you some sheets written in Norwegian and ask you if you did not yourself dictate that out of the log?

A. Yes, sir, I did.

(Testimony of M. B. Hansen.)

Q. And dictated the translation that Mr. Wood has in his hand, to my stenographer?

A. Yes, sir, I did, to the best of my ability.

Q. And are those true?

A. Yes, sir.

Q. Exemplars of both your deck and engine room logs?

A. Yes, sir.

Mr. BRISTOL: Now if you want to see the originals, Mr. Wood, I am perfectly willing to produce them, but that was done right here in my office and I absolutely know it is correct, because I had them proof-read back. Now if you have any doubt about it I will produce them.

Mr. WOOD: No, I haven't.

Q. Did you write any letters to your owners describing this accident?

A. Part of it, of course; partly.

Q. I mean that relates to this particular accident and how it happened.

Mr. BRISTOL: That is what you want, is it, Mr. Wood?

Mr. WOOD: Yes.

A. I wrote and told him the ships collapsed together—there was a collision.

Q. And did you save copies of those letters?

A. Yes, sir, I have.

Q. Now then, tomorrow morning when you come up, what Mr. Wood is after is to see whether your

(Testimony of M. B. Hansen.)

testimony here is the same as what you told your owners; see; and you bring your letters.

A. I told my owners, and I guess you are going to get that now; you never asked me; I told the cause of accident was because of reckless handling of the towmaster of the "Ocklahama." That is the principal point, I think. And they asked me who was the cause of the accident, and I said the other party to blame.

Q. That was by cable?

A. Asking my opinion; yes.

Q. That was by cable?

A. Yes.

Q. And then you wrote a letter following that cable up?

A. Yes.

Mr. BRISTOL: Now, that is all there is to it.

Mr. WOOD: Well, he says he will bring the letter.

Mr. BRISTOL: Yes.

WITNESS: Do you say you want the letter?

Mr. WOOD: Yes.

WITNESS: That is Norwegian. It is in a copy book, and if you want it you better bring a translator to translate it, because I am not going to do it.

Mr. WOOD: All right.

WITNESS: I have got something else to do.

Mr. BRISTOL: Now what became of that Norwegian copy? Did you take that?

(Testimony of M. B. Hansen.)

Mr. WOOD: No; I think you took them both.

Mr. BRISTOL: Do you want the Norwegian copy?

Mr. WOOD. No.

Q. (Mr. Bristol) I think I had you say that that was the one you had made, and it is a correct and true copy of your log book?

A. Yes, sir.

Q. That is the one, isn't it?

A. Yes, sir.

Mr. BRISTOL: I will furnish counsel for the various parties English translations of this, and simply offer it for identification but not in evidence. It is not competent evidence for the ship, but in order that counsel may have it always in the record and for the purpose of their convenience and to have it retranslated, if they desire, I offer to produce the originals in that connection, if they wish it. Mark it only for identification.

Said paper was thereupon marked "Libelant's Exhibit 15" for identification.

Q. Now the position of this "Thode" at the time of collision with respect to this dredge "Chinook," as I understand you describe it as being in such a position that the funnel or bridge of the dredge was about opposite the waist of your ship?

A. Yes.

Q. Or your bridge section; is that correct?

A. Yes.

Q. And this crankiness of backing that Mr.

(Testimony of M. B. Hansen.)

Wood spoke about, as a matter of fact your ship was backing full speed astern when she was hit, wasn't she?

A. Yes, sir.

Q. Well, what did this crankiness of backing have to do with the collision?

A. Nothing, only she turned a half a point to starboard, and instead of striking us on the port side of the bow or stem it would have struck us on the starboard side of the stem.

Q. Well, the natural motion of a ship with a screw turning full speed astern, the action of the screw upon the water is to throw the stern around, isn't it?

A. Well, it is not to do that, but it does, on account of the propeller going one way, a single propeller.

Q. That is what it does?

A. Yes.

Q. A single propeller with its screw. You don't know what the pitch of your screw is, do you?

A. The chief will tell you.

Q. All right. And it will be natural for the ship's head to go to starboard?

A. Yes, it is. Yes; a single screw propeller running that way. What do they call it, left-handed or right-handed propeller?

Mr. TOLLEFSEN: Right handed.

WITNESS: A right-handed propeller turns the head to starboard.

(Testimony of M. B. Hansen.)

Q. Yes; a left-handed propeller turns it the other way?

A. The other way.

Q. Now to get this a little clearer about this hard-astarboard business, Mr. Wood didn't follow it up and so I will with reference to about the two spokes. You meant by that when you went over with your wheel that you did not necessarily take the chains up tight and take all the slack out of them?

A. No.

Q. But you left about two spokes to go on?

A. No, they are tight, but we don't—that is the ordinary instruction with the man at the wheel, not to bang the machinery hard astarboard and hard aport, when it is not absolutely necessary.

Q. In other words, with steam steering gear, Captain, if he threw the aperture to the steam just clear open the engine just keeps on pulling her on over, doesn't it?

A. No, no, it can't come. It stops.

Q. When it gets clear over then the engine stops?

A. Yes.

Q. Now, therefore, your two spokes you spoke about—

A. (Interrupting) I said one or two.

Q. One or two spokes, simply means there is that latitude as a matter of practice with that

(Testimony of M. B. Hansen.)

kind of steering gear, whether you go hard aport or hard astarboard?

A. Yes.

Q. That is what you meant, was it?

A. Yes; not to break the gear down.

Q. Now in view of this peculiar situation here devolving about this position, with reference to a sketch that Mr. Wood had so much to say about, I show you a sketch on a tracing paper, or a piece of tracing paper purporting to have on it a sketch and a number of points and places marked thereon, with a scale saying about two thousand feet, and purporting to show what is called "Desdomona Sands" on the top of it.

A. Yes.

Q. And the words, "Down River" on it, and some figures on it, 1, 2 and 3, which, in the nomenclature of the paper, seems to indicate certain things. Now what is that and what does it represent?

A. This number 4 is where we were laying at anchor. Number 3 is the "Thode Fagelund" going out. Number 1 is the "Thielbek" coming in. And number 2 is the "Chinook" laying across the channel or the fairway.

Q. And the other numbers on there are indicative, as they are named below, of certain buoys and places on some kind of a chart?

A. Yes.

Q. Now what is that supposed to indicate?

(Testimony of M. B. Hansen.)

A. This indicates the Astoria harbor and the positions of the two ships that collided and the ship that was there to anchor on Sunday morning, August 24th, at three o'clock.

Q. Whom did you obtain that from and how did you have it made? State the circumstances.

A. I obtained this from Pilot Mack Nolan. He gave it to me. And I don't know who made it and I don't know how he had it made.

Q. And you don't know whether he made it himself?

A. I don't know. I don't think he did.

Q. You don't think he had it made; you don't know whether he made it himself?

A. I don't know.

Q. You don't know who made it?

A. No, sir, I don't.

Q. Do you know whether it correctly represents, or at what time it represents the positions of the ships?

A. This represented the positions at the time the ships were about—must be like five minutes before we were run into by the ship "Thielbek," towed by the towboat "Ocklahama"; about five minutes before.

Q. Now would you say, looking at that tracing paper, that it correctly represents the facts and circumstances as they appeared at the time five minutes before the collision?

A. Yes, I would.

(Testimony of M. B. Hansen.)

Q. You say you would?

A. About that, yes; pretty near it. Of course, the "Cihnook" would swing up a little more, I guess.

Q. That is where number two is indicated?

A. Number 2. We would be going dead slow ahead.

Q. And number 3 he points at?

A. Yes, number 3 would be going ahead only about one ship length more until she would get run down. This one here is coming along about four or five knots speed ahead.

Q. Now with reference to the location of the other objects and the buoys there attempted to be shown, can you state from your knowledge and recollection of the facts and circumstances at the time and what you saw there, whether at the time of, say four or five minutes before the collision, that correctly represents the location of those particular things shown on that plat?

A. Yes, sir, they are.

Mr. BRISTOL: Now to satisfy Mr. Wood's objections and statements, I offer the said plat in evidence as part of the redirect examination.

Mr. WOOD: I object to it as incompetent, on the ground that it was made by someone he knows nothing about.

Mr. BRISTOL: Now, that is all right. I want that marked Libellant's Exhibit as part of the redirect examination.

(Testimony of M. B. Hansen.)

Thereupon said paper was marked "Libelant's Exhibit 16" on Re-direct Examination.

Q. Now, Captain, with reference to the happening of these events you have testified about and in connection with Mr. Wood's statement as to whether you refused or not to express your estimates of how this thing happened and what occurred, how long was it after the collision before you saw Mr. Wood?

A. This gentleman (indicating)?

Q. Yes.

A. Why, I don't remember. That is, I really don't remember. Was it two or three days afterward? Let's see, now. I don't remember the date, but it was a couple of days after, I believe.

Q. Well, was it Sunday or Monday?

A. No. We were struck on Sunday; so it wasn't a whole week. Let's see. We were struck in the morning. Mr. Wood come down on the train, some night, on an evening train, and I saw him the next day. It would either be Tuesday morning or Wednesday morning, probably; I don't know.

Q. Well, whereabouts did you see him?

A. The last time I saw Mr. Wood in the hotel down there—what do you call it? Winehard or Winegardt Hotel.

Q. Weinhart Hotel?

A. Weinhart.

Q. Then where did you see him?

A. On board the ship. He come and give me a call on ship.

(Testimony of M. B. Hansen.)

Q. Who did he come on board with?

A. With my pilot, Nolan.

Q. How did you know it was Mr. Wood?

A. I was introduced to Mr. Wood.

Q. By whom?

A. By the pilot.

Q. What did he tell you?

A. He told me that he was Mr. Wood, so and so.

Q. What do you mean by "so and so"?

A. Mr. Wood. I say, "I understand." I knew who Mr. Wood was before he come on board, and I knew what he come down for. Nolan told me that he was an attorney or lawyer for The Port of Portland and was of the opinion that he was going to defend Nolan. He said he would like to show him around and show him something, show him the chart, and so on, the chart house. I asked Mr. Wood if he would care to see the chart, and he said, "Oh, no, don't bother." Isn't that true?

Q. That is, you offered to show him the position of the chart in the chart house at the time?

A. Yes. And Mr. Wood said, "Oh, I don't care; don't bother." Then I told Pilot Nolan that I don't think we will show him, Mr. Wood, too much, because he may be showing us something before long. Didn't I?

MR. BRISTOL: Well, never mind about that.

Q. Now with reference to the present situation of his desiring to have the position of the ships, Mr.

(Testimony of M. B. Hansen.)

Wood then, I understand, was down there investigating this collision and on board your ship?

A. He went up on the bow, yes, and looked at it.

Q. Now did you understand he was there, then, for The Port of Portland or for the "Thielbek"?

A. Yes, he made that claim because I guess then it was Nolan's misunderstanding of it, and he told me and Nolan that "I want this to be clear; I don't want this to be any misunderstanding; I have introduced myself to you as an attorney for The Port of Portland, but I may also be acting for the ship 'Thielbek.'" "Yes, Mr. Wood," I said, "I knew that before you told me," or something similar to that; which I did. Then Mr. Nolan says, why, he got a little excited. "Why," he says, "it is good that I know that." Nolan answered there, "I am glad I have got to know," he said; "I never thought of that," or something like that; "I never knew that before," or something like that.

Q. Was that all that occurred?

A. That is all. We went forward and then looked at the little scratches up forward, the collision, and the big hole.

Q. And then did Mr. Wood go ashore?

A. I guess he went in the cabin, I believe; he sat down in the cabin and had a little talk.

Q. Did you talk about the collision?

A. No, sir.

Q. How it happened?

(Testimony of M. B. Hansen.)

A. No, sir; not to me. He didn't ask me about anything.

Q. And he went off the boat without looking at the chart that you offered to show him, did he?

A. Yes. He said he didn't care.

Q. Now was that all that occurred?

A. That is, as far as I remember; yes.

Mr. BRISTOL: Now the foregoing testimony is offered by the libelant on redirect examination in respect of the statement of Mr. Wood in reference to the alleged refusal of Captain Hansen to mark the location, by estimates of time, of the respective ships upon the chart Claimant's Exhibits 1 and 2. Cross-examine, if you want to.

RE-CROOS EXAMINATION.

By Mr. Wood:

Mr. WOOD: I think the Captain has made it perfectly clear, but I want it to be very clear.

Q. This is what happened, isn't it, Captain: That Nolan and I came aboard your ship and Nolan said, "Mr. Wood is sent down here by The Port of Portland"?

A. Yes, exactly.

Q. "To look into things, and I want you to tell him about the collision"?

A. Yes.

Q. And I spoke up right away and said—

A. (Interrupting) Pretty soon, yes.

Q. Well, before you said anything?

A. Yes; yes; yes.

(Testimony of M. B. Hansen.)

Q. I said, "Captain, I don't want you to tell me anything here under any misunderstanding, because I am down here representing the "Thielbek," or I would represent the "Thielbek," or something like that? Didn't I say that?

A. Yes, I guess you said it. I remember it very well, because I knew you before.

Q. I told you right away I was for the "Thielbek," didn't I?

A. I know.

Q. Didn't I, Captain?

A. Yes. I will tell you, you stepped down on the deck, got up on the gangway and spoke a minute. I said, "Howdy do?" Then we spoke a little about the chart in the chart house, and you said you didn't care. We walked up forward and we got as far as the fore rigging and it didn't take us over three or four minutes. Then you said, "I have told you I am down here for The Port of Portland," to Nolan, "but I don't want you to misunderstand me; I also may represent the "Thielbek."

Q. No, I didn't say to Nolan I was representing The Port of Portland, did I? Didn't I say to Nolan this: "We are the regular attorneys for The Port of Portland"?

A. Yes; that is right; that is right.

Q. (Mr. Wood) Yes, sir. That is all. I want to make it clear I wasn't on that ship as any spy, or anything like it.

Mr. BRISTOL: No; nobody said you were.

(Testimony of M. B. Hansen.)

Mr. WOOD: No, but the inference was there.

Mr. BRISTOL: Nobody said you were. I wanted to get all the facts clear, so if there was any row about it—

WITNESS (interrupting): The only thing in it was that Nolan, he took you to hold the other position than you really held. Nolan never dreamed about—

Mr. BRISTOL (interrupting): That you were attorney for the "Thielbek."

Mr. WOOD: Do you know that?

A. Yes; surely.

Q. How do you know that?

A. Oh, I could see it on him.

Mr. WOOD: Well, that is all. I did want to ask one question. Have you finished?

Mr. BRISTOL: I just had one thing now, to come back to the redirect.

Mr. WOOD: Go ahead.

REDIRECT EXAMINATION.

By Mr. Bristol:

Q. Captain, you testified in answer to one of Mr. Wood's questions, or Mr. Minor's, it is immaterial which, about how you knew how much anchor chain was out and about this spring or screw that sets the brake. Now to get at it quickly, you had forward on the forecastle deck of your vessel before the collision, a steam winch?

A. Yes, sir.

(Testimony of M. B. Hansen.)

Q. Which hauls in the anchor chains through the port and starboard hawse pipes?

A. Yes.

Q. Upon either side of the large cog wheels which operate the winding gear are band brakes that are operated with screws?

A. Yes.

Q. And when the order comes to let the anchor go, you simply as a matter of fact let loose of that band brake after the lashings are cut and away she goes with a run?

A. We never have to lash them, they are never lashed in harbor.

Q. They are never lashed in harbor, but I mean ordinarily that is the operation?

A. Yes, sir.

Q. When you want to stop that anchor chain going out you simply screw down on that anchor brake, whether it be the port or starboard anchor; is that correct?

A. Yes, sir.

Q. In this case who was the man that operated that screw?

A. Chief officer.

Q. Chief Officer Hansen?

A. Yes, sir.

Q. J. A. Hansen?

A. Yes.

Q. You saw him do it, did you?

A. No, I could not see him do it.

(Testimony of M. B. Hansen.)

Q. You could not see him do it from where you stood?

A. It was too dark. If it had been daylight I could have seen him.

Q. Hansen was on this forecastle-head acting as lookout at the time, was he?

A. Yes, sir.

Mr. BRISTOL: That is all.

RE-CROSS EXAMINATION.

By Mr. Wood:

Q. Captain, I only want to ask you one question. Referring to Libelant's Exhibit 15 on redirect examination, do the marks 1, 2 and 3 represent the angles of the "Thielbek," "Chinook" and "Fagelund," respectively, to each other, at five minutes before the collision?

A. I should think so. Yes, pretty near it.

Mr. WOOD: That is all.

WITNESS: Yes; very good. That is very good. Say about five. Say make it three or four, if you want to; something like that.

And further deponent saith not.

Signature waived.

An adjournment was here taken until Saturday, September 13th, 1913, 9:30 a. m., at which time the taking of testimony herein was resumed as follows:

HAROLD RASMUSSEN was next produced as a witness on behalf of the libelant, and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bristol:

Q. What is your name?

A. Harold Rasmussen.

Q. What is your occupation?

A. Second mate.

Q. On what?

A. "Thode Fagelund."

Q. How long have you been second mate on the "Thode Fagelund"?

A. Well, that is very near fourteen months.

Q. Fourteen months. How long have you been a seafaring man?

A. Oh, that is a long time; since I was fifteen years old.

Q. How much?

A. Since I was fifteen years old.

Q. And how old are you now?

Q. Now I am thirty-five years.

Q. Thirty-five. And how long have you held second mate's papers?

A. Oh, that is very long. I have been mate and second mate.

Q. You have been both?

(Testimony of Harold Rasmussen.)

A. Yes.

Q. Both first and second mate?

A. Yes.

Q. And how long have you held mate's papers?

A. I have only held it from 1902, I guess.

Q. 1902. And how much navigating have you done? Where have you been? How much navigating have you done? Where have you been? Where have you sailed?

A. Well, sail any, everywhere—all over.

Q. Everywhere, all over. On the high seas?

A. Yes, all over.

Q. And most of the time by steam or most of the time by sail, which?

A. By sail and steam both.

Q. By sail and steam both. The most of your last experience has been on steam vessels or on sail vessels?

A. Last I have been on steam.

Q. Steam. And you have been on the "Thode" about thirteen months, have you?

A. Yes, thirteen and a half or fourteen months.

Q. And were you on the "Thode" on the 24th of August, 1913?

A. Yes, sir.

Q. Now we had a witness here by the name of Meier who said that he trimmed the lamps on the morning of Sunday, the 24th of August?

A. Yes.

(Testimony of Harold Rasmussen.)

Q. And he said he handed the side lights to you. Are you the second mate that got them?

A. Yes, sir. I put them up.

Q. What did you do with those lights?

A. I put them out when we was ready for to go, when the anchor was up ready for to go then I put them out; not before.

Q. Then you put them out?

A. Yes, sir.

Q. And where did you put them, in their baskets?

A. No. I put them outside on the place where the side lights used to be.

Q. Right in the screens.

A. Red one on the port side and green one on the starboard side.

Q. And were they there at the time your vessel commenced to move?

A. Yes, when we start to move they was there.

Q. Now state whether or not there were any other lights on your vessel that you saw at that time.

A. All the lights were up.

Q. All the lights were up?

A. All the lights was up when we was starting to go.

Q. Do you know who was on the bridge?

A. Captain, pilot and me.

Q. The Captain, pilot and you?

A. Yes, sir.

(Testimony of Harold Rasmussen.)

Q. What part of the bridge were you on, or whereabouts; port or starboard side?

A. I was in the steer house, all over.

Q. You were in the steer house. Then you were the man at the wheel?

A. Yes, sir.

Q. So you were the man that made the direction of the "Thode" in accordance with the commands of the pilot and the Captain?

A. Yes, sir.

Q. At this wheel?

A. Yes.

Q. Now, in order that we understand this, whereabouts is that wheel on the "Thode" with reference to this bridge deck and the telegraph stations that connect with the engine room?

A. Yes.

Q. Whereabouts is the wheel with reference to those two places? Do you understand me?

A. No, not quite well.

Q. Well now, you have got on the bridge of the "Thode" a telegraph station that connects with the engine room, haven't you?

A. Yes. Steering gear, you mean?

Q. No; I am talking about the signals to below.

A. Oh.

Q. What?

A. Yes; I understand now.

Q. Now there is one of those on the port side of your bridge deck, isn't there?

(Testimony of Harold Rasmussen.)

A. Yes.

Q. And there is one on the starboard side, isn't there?

A. Yes, sir.

Q. Now where is the wheel with reference to those two stations? Where is the steering wheel of your vessel with reference to those two places?

A. The steering wheel is amidship.

Q. What I want to get at, Rasmussen, is this: Where is that wheel so that Mr. Wood and Mr. Minor can understand where you were with reference to the captain and the pilot?

A. I was in the steering house.

Q. Where is the steering house with reference to those two stations?

A. The steering house is in the middle of the ship.

Mr. WOOD: Why don't you suggest it to him. I have no objection.

Q. (Mr. Bristol) You say in the middle of the ship. Now is it way back in the waist of the ship, or is it up forward? The wheel house is up forward, isn't it?

A. Up on the bridge, sir.

Q. Now whereabouts, between these two telegraph stations?

A. Between the two telegraph stations.

Q. Between the two telegraph stations. Now about how far were you from where the Captain stood?

(Testimony of Harold Rasmussen.)

A. Well, he was all over. He went across.

Q. I know, but when your ship was working and say he was at one of the signal bulbs, now how far away were you from that?

A. From the signal—well, about from one fathom or so.

Q. About six feet?

A. About six feet.

Q. Now where were you when the ship started to move?

A. Up on the bridge, steer house.

Q. In the steer house?

A. Yes, standing by the wheel, too.

Q. You took the wheel the first thing when your ship started, did you?

A. Yes, sir.

Q. Now who gave you your orders?

A. The Captain and the pilot; the pilot gave me the orders, and the Captain.

Q. You mean by that the pilot gave orders and the Captain repeated them?

A. No; the pilot gave the order.

Q. Yes. Now what did you do with respect to those orders?

A. I done just what he told me.

Q. What did he tell you?

A. Well, he told me when they are starting to steer from the first time we went out from Astoria.

Q. Well, that is what I want to know.

A. All them courses I don't remember.

(Testimony of Harold Rasmussen.)

Q. Well, I don't expect you will, and I don't want you to remember all of them. I don't care whether you do or not. I want you to tell me what he told you to do, as near as you can recall. I don't expect you now to remember all those courses.

A. No; I don't very well remember them.

Q. I don't expect you to, but I want you to tell me, as near as you can recollect, what he told you to do. What was the first thing he told you to do? Who was this pilot, do you know him?

A. No, I don't believe I know his name.

Q. All right. When he first got up there what was the first order you got; do you remember that?

A. No, I don't remember that.

Q. What was the second order you got?

A. It was steering out from Astoria. That is all I can remember.

Q. Well, I understand.

A. Just naturally down, and everything nicely, and then we saw that vessel. That is all.

Q. Well, when who saw the vessel?

A. The pilot and the Captain, and I saw it afterwards.

Q. You saw it afterwards. What did you do? What were you told to do when you saw the vessel?

A. I was told to put the helm hard astarboard. That is what he told me.

Q. Who told you?

A. The pilot.

(Testimony of Harold Rasmussen.)

Q. The pilot told you to put the helm hard astarboard?

A. Yes, sir.

Q. Did you do it?

A. Yes, sir.

Q. And did you change that order yourself without any other order from him?

A. No, sir; no.

Q. Did you at any time move the wheel, or change the course of the ship by moving the wheel without orders from the pilot or the Captain?

A. No, sir; I just done what they told me to.

Q. Was anybody else at the wheel beside yourself?

A. Yes; he come to relieve me just before the collision.

Q. He came to relieve you?

A. Yes.

Q. Just before the collision?

A. Yes.

Q. Who is he?

A. Meier.

Q. Meier?

A. Yes.

Q. Were you at the wheel at the time of the collision?

A. Yes, sir.

Q. You had the wheel in your hand at the time of the collision?

A. Yes, sir.

(Testimony of Harold Rasmussen.)

Q. So Meier hadn't just relieved you. You hadn't gone off watch yet?

A. No.

Q. It was Meier's trick at the wheel after you got through, was it?

A. Yes, sir.

Q. Did you see the "Thielbek" before the collision?

A. Yes, sir; I saw her just before.

Q. You saw her just before?

A. Yes, sir.

Q. How did she head just before the collision with respect to your ship?

A. Well, after mine was right ahead—I don't remember that so well. I think it was a little bit.

Q. You think a little bit what?

A. Well, just a little to the starboard side.

Q. A little towards your starboard side, you mean?

A. Yes, just a little bit.

Q. Now, did you see her at the instant when she cut into you? What did you do then?

A. When she cut?

Q. When she cut into you; when she struck you; did you see her then? What were you doing then?

A. I went down.

Q. The moment the "Thielbek" struck you did you see her then?

A. Yes. Yes, sir; I did.

(Testimony of Harold Rasmussen.)

Q. Now what happened up there when she struck you? Did you see it? What happened?

A. When it struck us?

Q. Yes. Tell me what happened when she struck you. What occurred when she struck you?

A. I don't understand that.

Q. You don't understand that?

A. No, sir; I don't understand that.

Q. Now listen: When the "Thielbek" struck into you, what happened? What happened?

A. Well, it happened that that make a hole in the ship.

Q. All right. Go on and describe now what you saw there, what she did, what the "Thielbek" did to you. Just tell me about it as if you were telling me what happened there, as you saw it. What did she do?

A. She make a hole in the ship.

Q. Whereabouts was that hole?

A. On the port bow.

Q. And how far back?

A. How far back from the bow?

Q. Yes.

A. Well, that is about three or four feet.

Q. That is right from the stem, you mean?

A. Just from the stem; yes, sir.

Q. Yes. And then that hole extends back down the port bow of the ship how far in distance, about?

A. From the stem?

(Testimony of Harold Rasmussen.)

Q. From where the hole commences just by the stem there, from three or four feet from the stem.

A. Yes.

Q. And it comes on down the port bow of the ship how far?

A. Well, I don't know exactly how much it is.

Q. Well, do you know if anybody was on the forecastle head?

A. The mate was there.

Q. Who is that, Hansen?

A. Hansen was, and the carpenter was there, but he went down before.

Q. He went down below, did he? The carpenter went down?

A. No, I don't think—he just went down below, underneath.

Q. That is what I say, he went down underneath. Now your forecastle deck there is arranged so that you have a distance in the waist of the ship between the bridge and your forecastle deck where the decks of the ship are lower by several feet than the topgallant forecastle, is it not?

A. Yes, sir.

Q. And in that place you had, as I understand it, a lot of piling and stuff?

A. Yes, sir. There was, just above the forecastle head a little bit; I don't know how many feet.

Q. Now when you were on this wheel deck, where you were on the bridge deck—the wheel deck and the bridge deck are just the same on your ship,

(Testimony of Harold Rasmussen.)

aren't they? Practically the same? You step over there a little piece (indicating)? Or is it level?

A. The wheel deck?

Q. The wheel deck and the bridge deck; are they above one another?

A. Yes, they are above one another.

Q. Well, how far?

A. The bridge deck and the wheel deck—well, I could not tell how far. I am not sure of it.

Q. Now in getting into your wheel house here is what I want to get at. Now suppose this is where your telegraph is. This is your bridge deck, understand; now, on the bridge (illustrating).

A. Yes, sir.

Q. Now you want to get into the wheel house, where you were, do you understand?

A. Yes, sir.

Q. Now do you walk right off of this floor into the wheel house, or do you step down a step or two, or is it right level with the deck? That is what I want to get at. Do you understand my question?

A. No, I don't think so.

Q. Well, we are going to have that straight if it takes all day. There is your telegraph on that side, and here is your telegraph on this side (counsel drawing pencil sketch). Do you understand that?

A. Yes, I understand that.

Q. Now we will say your wheel is here?

A. Yes, there is the wheel.

Q. All right. Now do you step down some steps

(Testimony of Harold Rasmussen.)

coming from here when you go into this wheel house here? Do you step down some steps like that to get to the wheel, or is the wheel on the level floor like that?

A. Well, the wheel is there (indicating).

Q. What do you mean by there? I want to get it in the record. Do you step down off of this deck one or two steps to the wheel down here?

A. No.

Q. Or is the wheel on a level with the telegraph deck?

A. No. It is steps from the after part both sides, and then go out; there is a door right on each side of the steer house. Go in there and then in there, and walk right there (indicating).

Q. Walk right there?

A. And there is one on the port side to go up on the upper bridge.

Q. Yes, but I am talking about the wheel house now. Never mind about the upper bridge up here on this deck. I don't care about that. I want to know about getting into this wheel, whether when a man stands here at this telegraph station—

A. (Interrupting) I understand.

Q. Are his feet level with yours, or are you below him?

A. No; it is just the same.

Q. The same height?

A. The same height.

Q. All right. That is what I want to get at.

(Testimony of Harold Rasmussen.)

A. I was only six or seven feet from there.

Q. What?

A. I was only six or seven feet from there, from there up to the wheel.

Q. From where the captain stood?

A. Yes, sir.

Q. And the pilot was right above you, was he?

A. Yes.

Q. Right on the ceiling of the wheel house?

A. Yes, sir.

Q. Did you get any other order previous to the collision than to put your helm to starboard?

A. Put the helm to starboard, yes.

Q. I say, did you get any other order previous to the collision?

A. No, sir; no other order.

Q. Than to keep a starboard helm?

A. Yes, sir.

Q. What?

A. Yes, sir.

Mr. BRISTOL: Take the witness.

CROSS EXAMINATION.

By Mr. Wood:

Q. Mr. Rasmussen, when you saw the "Thielbek" coming up what lights did you see on her?

A. I didn't see any lights at all.

Q. How did you see her at all?

A. No; only see the rigging just before.

Q. You only saw the rigging just before the collision?

(Testimony of Harold Rasmussen.)

A. Yes, sir; just when they turned around the corner of the dredge.

Q. Yes, when she came around the corner of the dredge?

A. Yes. I saw the rigging. That is all what I saw.

Q. So at first the dredge was between you and the "Thielbek"?

A. The dredge?

Q. At first. That is, the "Thielbek" came around behind the dredge, then you saw her rigging; is that it?

A. I saw the "Thielbek" was lying there, and then see it a little bit on the starboard side.

Q. What?

A. I just saw the "Thielbek" a little bit on the starboard side, just a little bit.

Q. Of your boat?

A. From the "Thode."

Q. From the "Thode"?

A. Yes, sir.

Q. And how far away was she when you saw her?

A. Well, it wasn't much. Well, I could not exactly tell, but I don't think it was more than two hundred and fifty feet, or more than that.

Q. Two hundred and fifty feet?

A. I don't think it was more. I can't tell exactly for sure.

(Testimony of Harold Rasmussen.)

Q. Well, what was the reason you think that you did not see her lights?

A. I didn't see no lights.

Q. You think she didn't have any lights out?

A. I am sure afterwards when I looked at the lights the lights seemed to me very poor. That is, when I looked at them.

Q. You mean when you looked at them after the collision?

A. Yes, afterwards I thought the lights look not clear enough; but that makes no difference.

Q. Well, how far away could you see objects that night? Could you see objects on the shore all right.

A. If I could see the land?

Q. Yes.

A. Oh, yes.

Q. It was easy to see that?

A. Oh, yes, it was easy to see the land.

Q. Was the night a clear night?

A. No. Clear?

Q. Clear night?

A. Well, I thought it was very dark.

Q. What?

A. I could not see no moon; no.

Q. You could not see any moon?

A. No.

Q. But the air was clear?

A. No, it was not foggy.

Q. No.

(Testimony of Harold Rasmussen.)

A. No, it wasn't foggy.

Q. Why was it, do you think, that you didn't see the "Thielbek" until she got within two hundred and fifty feet of you? Why didn't you see her before?

A. Well, that makes—well, I don't know. It must be (indicating) the dredge, I think.

Q. You think the dredge was in the way?

A. I am not sure; I think, though, all the lights—I could not see it before, I am sure.

Q. Well, what do you mean by all the lights?

Mr. BRISTOL: He said all the lights on the dock, but the stenographer didn't get it.

Mr. WOOD: No, he didn't say that, Mr. Bristol.

Mr. BRISTOL: Well, where do you claim they were; on the dredge?

Mr. WOOD: I think that is what he means. You mean lights on the dredge?

Mr. BRISTOL: Lights on the dredge, eh?

WITNESS: I mean all the lights, ashore and on the dredge.

Mr. WOOD: Ashore and on the dredge?

A. Yes, sir; both of them.

Mr. WOOD: I don't think you ought to suggest things to the witness on my cross examination, Mr. Bristol.

Mr. BRISTOL: No, no; I am not. I want you to have all the latitude you can as long as you are not too suggestive in getting your viewpoint in there.

(Testimony of Harold Rasmussen.)

Mr. WOOD: It is perfectly competent for me to lead the witness on cross examination.

Mr. BRISTOL: As to matters concerning which he has been examined.

Mr. WOOD: Yes. You asked him when he saw the "Thielbek" and all about it.

Mr. BRISTOL: Yes. He said nothing about lights.

Q. (Mr. Wood) When did you get this order to put your helm hard astarboard?

A. Well, just when I see that ship.

Q. Just when you saw the "Thielbek"?

A. Yes, just when I see the "Thielbek."

Q. That was the first time you got it?

A. Yes, sir.

Q. Had there been whistles before that?

A. Before I saw the "Thielbek"?

Q. Before you got your order hard astarboard did your boat give any whistles, or was it about the same time?

A. Just when I see her they blow two whistles; blowed two times two whistles.

Q. Yes. Your first whistle you blew when you first saw her; is that right?

A. The first time they blowed two whistles, and the other time they blowed two other whistles and they didn't get an answer on the first one.

Q. And I say the first two whistles that were given are when you first saw the "Thielbek"?

A. Yes.

Q. Your Captain yesterday testified that the

(Testimony of Harold Rasmussen.)

wheel wasn't put quite hard astarboard; almost, but not quite.

A. No, it is not. You can't never put it hard over.

Q. You put it as hard over as you generally do?

A. Yes, as I generally do.

Q. When you get an order hard astarboard?

A. Yes, sir.

Q. And does the ship obey that helm easily?

A. Yes, that is easy to put it over; steam steering.

Q. Did you notice the vessel, your vessel, obey the helm that night? Did you notice it?

A. Know the vessel?

Q. No. When you put your helm hard astarboard, did you notice your vessel begin to swing?

A. No, I didn't notice it at all. It is too quick. Because it was dark and just I see the ship; that is all.

Q. What do you mean by saying it was too quick?

A. I mean when I saw it.

Mr. BRISTOL: When you saw the "Thielbek" you mean it all happened so quick you didn't know what happened?

A. Yes, that is what I mean. It was quick.

Mr. BRISTOL: Well, say so, then.

Q. (Mr. Wood) Now you said that you saw the "Thielbek" on your starboard side, and I didn't understand—

(Testimony of Harold Rasmussen.)

A. (Interrupting) The starboard side.

Q. That is, you meant when you first saw her?

A. Yes, that is what I meant, just when I saw her; yes.

Q. And which way was she heading then?

A. Well, I could not—heading? She was heading right against us.

Q. Heading right for you?

A. I just see the rigging. That is all I could see.

Q. So you don't know exactly which way she was heading? Is that what you mean?

A. Oh, yes, I know that. They was coming like that (indicating), and she was just a little bit—and we had her just a little bit in our starboard bow.

Q. Which way was she heading in relation to your course?

A. I didn't take any notice of it. It was too dark; and I didn't look at that at all.

Q. You don't know how she was heading?

A. No.

Q. In regard to your course?

A. The pilot and Captain was up there.

Q. What?

A. The pilot and Captain was up there, was outside.

Q. How far did the collision take place from the dredge, Rasmussen?

A. From the dredge?

Q. Yes.

(Testimony of Harold Rasmussen.)

A. I think it was a couple of minutes or something.

Q. What?

A. I think a couple of minutes.

Q. No. I say how far away from it?

A. From the dredge?

Q. From the dredge, was the collision?

A. From the dredge. I think it was—well, I can't say for sure, but I think it was two ship's length.

Q. Two ships' length?

A. Yes, I think it was.

Q. Which way from the dredge, upstream or down stream or inshore from it?

A. No.

Q. Or what do you mean?

A. Out.

Q. Out?

A. Out, yes, the river?

Q. You mean toward the shore?

A. No. I mean right out.

Q. Well, do you mean upstream or down stream, or toward the land, or what?

A. No. I mean when you go out of the river; that is what I mean. When I go out of the river.

Q. Well, you say you think the collision took place two ship's length away from the dredge, but I don't know whether you mean upstream or down stream, or abreast of her, toward the land, or what?

A. Well, above.

(Testimony of Harold Rasmussen.)

Mr. BRISTOL: Well, he wants the direction now. Where were you, inshore, or outshore from the dredge?

A. I will mark there.

Mr. WOOD: Mark it on a clean sheet.

WITNESS: There is the dredge (drawing). It was just like that. That is the shore there. Astoria you see there (indicating). We was coming like that (drawing).

Mr. WOOD: What is this (indicating on said drawing)?

WITNESS: Well, that is the "Thode."

Q. That is the "Thode"?

A. There is the line (drawing).

Q. That is the dredge?

Mr. BRISTOL: That is the line of the dredge, he said.

WITNESS: I think I was about there.

Mr. WOOD: Where the collision took place?

A. I think so. It was about there, I think; I am not sure.

Mr. BRISTOL: Now, Mr. Wood, we will agree upon the place where the witness marks for counsel is a point between the dock and the dredge anchorage, and he says about two ship's length away.

Mr. WOOD: Yes: This place here I mark "A" is about where the dredge was, this line?

WITNESS: Yes.

Q. And this line here you mean for the "Thode"?

A. Yes.

(Testimony of Harold Rasmussen.)

Q. (Mr. Wood) I will mark it "Thode."

WITNESS: Well, I am not sure of it, you see.

Mr. WOOD: I know, but it is rough. And this line, this spot here I mark—

Mr. BRISTOL (interrupting): Put a circle around it and mark it Y.

Mr. WOOD: I mark "Y." That is the point you think the collision was?

WITNESS: I think, yes.

Q. And this line here, where I wrote Astoria, is the Astoria docks; is that right?

A. It is about there. I can't exactly tell that. I didn't notice it.

Q. How far do you think the collision was from the Astoria docks?

A. From Astoria dock?

Q. To the place where you came together?

Mr. BRISTOL: Now, Mr. Wood does not mean that is the name of the dock; he means any wharf there in Astoria.

Mr. WOOD: Yes.

Mr. BRISTOL: What he is trying to get at is this: How far from the dock here? See, this is the dock (indicating).

WITNESS: Yes, I understand.

Mr. BRISTOL: And the dredge is out out here somewhere. If you place it two ship's length from the dredge, how far was it from the dock where you collided, if you know? If you don't know, say so; if you do know, estimate it.

(Testimony of Harold Rasmussen.)

A. No, I don't know. I better not say that, because I can't tell it for sure.

Q. (Mr. Wood) Well, can you estimate it? Do you know what he means?

A. Yes, I know what he means.

Q. Well, what do you estimate it at then in ship's lengths?

A. From that place we were — from the collision??

Q. From the collision, yes.

A. Well, four or five—five ship's length, I think.

Mr. WOOD: I offer this diagram in evidence to illustrate the witness' testimony. That is all.

Thereupon said diagram was marked Claimant's Exhibit 3.

Mr. MINOR: I have no questions.

And further deponent saith not.

Signature waived.

J. A. HANSEN was next produced as a witness on behalf of the libellant, and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bristol:

Q. Your name?

A. J. A. Hansen.

Q. Your occupation?

A. Chief Officer.

Q. On what ship?

(Testimony of J. A. Hansen.)

A. "Thode Fagelund."

Q. How long?

A. How long have I been there?

Q. Yes.

A. A couple of months.

Q. A couple of months. You shipped at Portland?

A. Yes, sir.

Q. And how long have you been a mate?

A. Oh, about ten years.

Q. Ten years. During that time where have you sailed?

A. All over.

Q. Your experience been mostly in steam or sail vessels?

A. All in steamers. Well, in sailing vessels as able seaman.

Q. On sailing vessels as able seaman, and steam vessels as chief officer?

A. Yes.

Q. All right. Now then, what else have you been doing besides being mate?

A. I have been master a year on the steamer "Tordan Skjold."

Q. Is that for this same owner?

A. Yes, sir.

Q. Wilhelmsen?

A. Yes, sir.

Q. And you might state whether during that

(Testimony of J. A. Hansen.)

entire time you have had general experience in handling this class of vessels?

A. Yes, sir.

Q. Now where were you on Sunday morning, August the 24th?

A. On the forecastle head.

Q. Of what ship?

A. "Thode Fagelund."

Q. Now when you say in the forecastle head, do you mean on deck or underneath?

A. Up on the deck.

Q. The topgallant forecastle?

A. Up on the deck, on top.

Q. Up on the deck?

A. Yes, sir.

Q. On top?

A. Yes, sir.

Q. Whereabouts?

A. Right by the windlass.

Q. Right by the windlass. Now I want you to describe for me, so that these gentlemen understand it, just how that ship is fixed. Now she has, commencing right abaft her stem, she has first a small steel plate piece of decking in there?

A. Yes, just a small one.

Q. Then you come, really starting in with the topgallant forecastle, and all of that decking is wood, isn't it?

A. Yes.

Q. And all that wood decking is first and almost

(Testimony of J. A. Hansen.)

directly abaft of the stem, say a distance of how far, about four feet, are the chocks, through which the anchor chains come up through the hawse pipes?

A. Well, about a couple of feet.

Q. A couple of feet?

A. A couple of feet.

Q. And from that comes the dogs or winches that carry the anchor chains that are attached to that winch?

A. Well, the chains go over kind of a—

Q. An idler?

A. Yes, sir.

Q. A roller?

A. Yes, an idle roller.

Q. And then comes up and goes down into the chain locker?

A. Yes, sir.

Q. Now that whole machine, the cog wheels and the cylinders and everything, is about how extensive? Say four feet wide, or six feet wide and four feet long?

A. No; about seven or eight foot wide—no, I mean athwartships.

Q. Athwartships?

A. Yes, sir.

Q. And about four feet the other way?

A. Oh, no, not that much.

Q. Or five?

A. It is not that much.

Q. It is not five, is it?

(Testimony of J. A. Hansen.)

A. About four feet.

Q. Yes. That has twin engines, hasn't it, little twin engines that run with wheels, with a drive cog wheel arrangement?

A. Yes, sir.

Q. That turns this drum that pulls the chain?

A. That is right.

Q. All right. Now back of that, next your foremast, there are a couple of screw handles?

A. Kind of turnbuckle, like.

Q. Now wait a minute. Now this turnbuckle that you are talking about is an arrangement which I illustrate something like that (counsel drawing); it runs down with a screw, around which this band runs, the brake band?

A. That is right.

Q. And as you turn that screw it tightens this band up; is that correct?

A. That is correct, and that slackens it up.

Q. There is one on the port side?

A. And one on the starboard.

Q. And one on the starboard. If you want to let your port anchor go, you unloosen this brake band?

A. Yes, sir.

Q. And away she goes?

A. That is right.

Q. If you want to let go your starboard anchor—

A. (Interrupting) You do the same thing.

(Testimony of J. A. Hansen.)

Q. You do the same thing, only on the opposite side of that winch; is that correct?

A. That is correct.

Q. Now in this distance of seven feet in length and four feet in width, it is about a foot from the end of that where this turnbuckle comes that goes over that drum, isn't it?

A. Here is the bow of your ship (illustrating), see?

Q. About a foot from there?

A. Yes, about that.

Q. Now you stood between the topgallant and forecastle head?

A. No, I stood—

Q. On that deck and back of the winch where did you stand?

A. I stood right by here (indicating).

Q. Right by the port turnbuckle?

A. Yes. I could have reached it with my right hand.

Q. So that you could reach the turnbuckle with your right hand. Then you stood at the place where operating that turnbuckle, you would control the set of the port anchor?

A. Yes, sir.

Q. Is that correct?

A. That is right.

Q. Now was it that port anchor that you had down when you started on your voyage?

A. Yes, sir.

(Testimony of J. A. Hansen.)

Q. Was that port anchor lifted with your orders?

A. Yes, sir.

Q. About what time did you direct the winch men to go ahead and haul in that anchor?

A. Gathered the anchor up at 3:20.

Q. Had the anchor up at 3:20?

A. Yes, sir.

Q. That was the morning of Sunday, the 24th of August?

A. Yes, sir.

Q. How much chain did you pull in? Do you remember how many shackles you had gone by?

A. I had thirty fathoms out at the time we was anchoring at Astoria.

Q. At the time you came to anchor at Astoria you had thirty fathoms out; so that we get that down so the Court will understand it, a sailor measures an anchor chain at—

A. (Interrupting) In fathoms.

Q. By where the shackle joints come in the chain, doesn't he?

A. Yes, sir.

Q. It is so many fathoms to the first shackle, and so many fathoms to the second, and so many to the third?

A. There are fifteen between each of them.

Q. There are fifteen between each of them. That is what I am getting at. So that you pulled up two

(Testimony of J. A. Hansen.)

shackles on the chain if you had thirty fathoms down?

A. Yes, sir.

Q. And the port anchor was the one you took up at 3:20?

A. Yes, sir.

Q. How long was it after you got that anchor up that your ship started, if you know?

A. Well, we started right away.

Q. You started right away. Did you stay on the forecastle deck there as in the capacity of a lookout, or were you just there for the anchor?

A. I stay there for the anchor and for the lookout both.

Q. For the lookout?

A. Yes, sir.

Q. And you were acting as lookout at the time of this accident?

A. Yes, sir.

Q. How far had you gone, if you can estimate the distance, or if you can do it in minutes, do it in that way, how long or how far had you proceeded before the first event happened on your ship that caused you to do anything?

A. Oh, about a thousand feet.

Q. About a thousand feet, you say?

A. About so. I can't tell you exactly.

Q. Now when you had gone about that distance, what, if anything, took place that caused you to do anything?

(Testimony of J. A. Hansen.)

A. I let go my anchor.

Q. Why did you let go of your anchor?

A. That is the order from the pilot, to let go my anchor, port anchor.

Q. What did you do?

A. Dropped it (with motions of the hand).

Q. Now wait. That is what I am getting at. That don't get in the book, you know. I know what you did, but your signs to me don't do a bit of good.

A. All right.

Q. What did you do when you dropped that anchor?

A. I just took my hand to the turnbuckle.

Q. That is the port turnbuckle?

A. Yes, sir, and loosened the brake.

Q. Loosened the brake and let the chain go by on the run?

A. Yes, sir.

Q. How much did you let out?

A. Fifteen fathoms.

Q. Yes. You went down to the first shackle?

A. Yes, sir.

Q. Then you held her, did you?

A. I turned her up a little, but the turnbuckle was slack.

Q. Then what did you do?

A. I stayed there on watch.

Q. Now at that particular instance, how long was it from the time you were ordered to let that anchor go before something else happened?

(Testimony of J. A. Hansen.)

A. Oh, I can't say in minutes how much it was.

Q. Well, did you notice anything at the bow of your ship when you were ordered to let the anchor go?

A. I noticed it.

Q. What did you see there?

A. I noticed a sailing ship.

Q. A sailing ship?

A. Yes, sir.

Q. How far was she off now if you can estimate it in ship's lengths; how far was she off when you were ordered to let the anchor go?

A. Oh, let me see; about a ship's length, I think.

Q. About a ship's length?

A. I think so, yes. That is my estimate.

Q. Now then, coming back to what I wanted to ask you, or what you wanted to tell me, and what I wanted to ask you before, before you were ordered to let the anchor go, what had you seen, and in seeing it, what had you said, if anything, about it?

A. I saw two red lights, and I sang out for them.

Q. Sang out to whom?

A. Up on the bridge.

Q. And what happened then on the bridge?

A. I can't tell.

Q. Now what was done; did you hear anything?

A. I heard whistles.

Q. What kind of whistles?

A. I hear two whistles, short whistles.

(Testimony of J. A. Hansen.)

Q. Did you hear any answer to those two whistles?

A. No, sir.

Q. Those whistles were blown by what boat?

A. The "Thode Fagelund."

Q. Now you say you did not hear any answer to those two whistles?

A. No, sir.

Q. Did you hear any other whistles?

A. Two afterwards.

Q. About how long afterward?

A. Oh, shortly afterwards.

Q. Was that before you were struck?

A. Oh, certainly.

Q. Now, did you hear any other whistles before you were struck?

A. Well, I heard four whistles, four short whistles, and then four short whistles again from our ship.

Q. Then as I understand it now, there were first two whistles?

A. Yes, sir.

Q. And no answer?

A. Yes.

Q. Then you heard two other whistles?

A. Yes, sir.

Q. And then you heard four short blasts?

A. Yes, sir.

Q. And then you again heard four short blasts?

A. That is right.

(Testimony of J. A. Hansen.)

Q. Before the "Thode" was struck?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Now all this time you were on the fore-castle deck up there; is that right.

A. Yes, sir.

Q. Just abaft that winch?

A. Yes, sir, that is right; correct.

Q. Now when you first saw these red lights you talk about, can you give me any estimate, or could you see the hull of the ship, or anything so as to give an estimate, of about how far off those red lights appeared to be?

A. Well, it is hard to tell. About fifteen hundred feet, or so.

Q. About fifteen hundred feet?

A. It is hard to tell just the distance.

Q. That would be pretty nearly four times the length of your ship?

A. About three or four ship's length or so. It is hard to tell you.

Q. I understand that you are not giving that accurately; it is merely your estimate of the distance, of course.

A. What?

Q. I say I understand that you don't pretend to give that accurately; it is only your estimate of the distance.

A. That is right.

(Testimony of J. A. Hansen.)

Q. Now when you first saw these red lights, what part of the approaching ship could you see, or did you see? Did you see any part of her, and if so, what part?

A. Well, I saw her, but I never took any notice of it.

Q. Well, what did you see? You say you did not take any particular notice of it. Now what was it? You saw these red lights; did you see anything more than the red lights? What I am getting at, I don't want to lead you, but what I want you to describe is if you saw any part of the ship with the red lights, tell us what part you saw; if it was her top hamper, tell us what it was; if it was the hull, tell us it; or if you could see the topmast—

A. (Interrupting) I could see the rigging all right. I saw the rigging.

Q. Yes, you saw the rigging. Now you mean by that the top rigging?

A. Yes.

Q. Could you see from that top rigging, or was there anything to indicate to you, standing where were on the bow of the "Thode Fagelund" at that time, what direction the "Thielbek" was heading in? Could you tell from the way the masts lay to you, or was it light enough for you to see?

A. No.

Q. What way she was heading?

A. No, not exactly. I could not tell you exactly.

Q. Now can you tell me this: What direction

(Testimony of J. A. Hansen.)

when you first saw the "Thielbek," did she bear from your ship?

A. A little on the starboard bow.

Q. A little on the starboard bow. Now that little.

A. Very little.

Q. That "little" is a relative term. It may mean more or less. Now what do you mean by "a little"?

A. Well, I call between nothing and a quarter of a point or so.

Q. Would it be as much—

A. (Interrupting) About a quarter.

Q. It would be over a quarter or less than a half?

A. No.

Q. Or would it be about a quarter of a point?

A. It would be about a quarter of a point, I should think.

Q. About a quarter of a point. From where you stood on the "Thode," she was about a quarter of a point off your starboard bow?

A. Yes, sir.

Q. When you first saw her red lights?

A. When I first saw her, yes.

Q. Now then, you stood at that time in a different position than you did?

A. I stood just there (indicating), at the anchor winch.

(Testimony of J. A. Hansen.)

Q. At the anchor winch on the port side of the anchor winch?

A. Yes, sir, right at the anchor winch.

Q. And at that position you stood in, were you looking forward?

A. Yes.

Q. And then you saw her about, as you estimate it, a little on your starboard bow?

A. Yes, sir.

Q. Which you think is a quarter of a point?

A. That is what I think it is, about.

Q. Yes. Now how long was it, from where you were could you say how long it was before any orders were given, or did you hear any orders given with reference to the progress of your ship, outside of the one you said, "Let go the anchor"?

A. I heard the whistles.

Q. And outside of that did you hear any other commands, or anything?

A. Nothing.

Q. You were too far forward?

A. I was about 125 foot from the bridge; about that or more.

Q. Yes.

Mr. Bristol: That gives you that distance, Mr. Minor, you wanted.

Q. Your forecastle head is about—

A. (Interrupting) Just a minute; let's see. From the forecastle head to the masthead, about

(Testimony of J. A. Hansen.)

120 to 150. I can't say. Not so much as 150; 125 I would think.

Q. Yes; from the forecastle head to the wheel house?

A. Yes, sir.

Q. And to the bridge?

A. About that; I can't tell.

Q. That would be between perpendicular lines?

A. Yes, sir.

Q. That is not exact, but about?

A. That is an estimate.

Q. Now between the wheel house and where you stood, was the foremast of the vessel with her shrouds?

A. Yes, sir.

Q. And her derricks?

A. Yes, sir.

Q. She had fore and aft derricks?

A. The derricks were down.

Q. Yes, the derricks were down on the cargo?

A. Two were down and two were lashed up to the masts.

Q. Now which two were down, the forward ones or the after ones?

A. The two number 1 derricks were down, and the two number 2 were up on the after part of the masts.

Q. The after derricks were up?

A. Yes, sir.

Q. And the lanyards hauled taut and the der-

(Testimony of J. A. Hansen.)

ricks lashed into the mast; and the forward derricks, number 1 hold, were down and lashed to the cargo?

A. That is right.

Q. Now I want you to tell me, if you can, illustrating to you on a piece of paper here, if that were the bow of your ship, showing a spherical triangle here, whereabouts and in what direction did the "Thielbek" come on you?

A. Well, about five or six degrees on the port bow.

Q. About five or six degrees on the port bow?

A. Yes, sir; about that.

Q. Now would that five or six degrees on the port bow—

A. (Interrupting) It would take about the hawse pipe.

Q. That is what I want to get at. Describe where it would strike you. Would it strike the hawse pipe coping?

A. Yes, sir. About here is the hawse pipe (indicating).

Q. Yes; and it would strike in at your port hawse pipe?

A. Yes, sir.

Q. In the coping?

A. Yes, sir.

Q. That would be the lower coping?

A. Yes, sir.

Q. Can you tell me how far down, assuming to

(Testimony of J. A. Hansen.)

be the stem and this the forecastle deck, how far down from the bulwark rail is it to the port hawse pipe? How far down is that?

A. Let's see; five or six foot, I think.

A. About five or six feet. Now as I understand it, she came onto you at such an angle as to strike into the coping and glance along on the port side of your bow at that point (indicating).

A. That is right. That is about it.

Q. That is right, is it?

A. Yes.

Q. Now then, when that struck in there in that position—

A. (Interrupting) Yes.

Q. (Continuing)—what was the first thing that she came in contact with? You were standing here by this winch?

A. Yes.

Q. On the port side, as I understand it. Describe to us now what was done by the impact of the "Thielbek," if anything, with respect to this anchor chain winch?

A. It broke the anchor chain winch down.

Q. Well now, that is true perhaps, but what—

A. (Interrupting) That is true.

Q. But can you tell me what way she broke it?

A. Well, she broke it, because she had so much speed she went clean into it.

Q. No, no; that is not the point. The direction that she broke it. What direction did she break it

(Testimony of J. A. Hansen.)

in? Now listen. Did she break it by forcing it over this way to the port side, or did she break it by driving it straight back, or did she break it by forcing it over to the starboard side?

A. That anchor windlass was just—the machinery broke off, so I can't say which way it is; but it looks to me the thing is shoved, the stem is shoved over to the starboard, put over to the starboard, you know.

Q. Yes.

A. I mean over this way (illustrating).

Q. That is the stem of the vessel, probably?

A. The stem of the "Thode Fagelund," yes.

Q. Yes.

A. This is turned over to starboard (illustrating).

Q. That is twisted over to starboard?

A. Yes, sir.

Q. This stem right here (indicating)?

A. Yes, sir.

Q. What kind of a thing is that? When you call it a stem, what is that?

A. It is a big iron piece, about six—I don't know; I think it would be six or eight by four, or something; eight by three.

Q. Eight by three?

A. I am not sure of the thickness of it.

Q. Well, around in that vicinity; and that was twisted over to starboard?

A. Yes, sir.

(Testimony of J. A. Hansen.)

Q. Is that your idea?

A. That is right.

Q. Now was this winch and all of this stuff here pushed to port or pushed to starboard?

A. Oh, pushed a little over to starboard.

Q. Pushed over to starboard. Now how about this port hawse pipe?

A. That broke and fell down.

Q. Broke and fell down in the forepeak?

A. Yes, sir; it lays there yet.

Q. It lays there yet?

A. Yes, sir.

Q. Nobody has moved it?

A. No, sir; nobody has touched it; except one piece went overboard and the other two lays there.

Q. A piece of the coping is still into the side of the vessel there, is it not?

A. Yes, sir.

Mr. BRISTOL: This is for the purpose of connecting up with some other testimony, Mr. Wood and Mr. Minor.

Q. Did you, in accordance with my direction on board ship, have the photographs taken in the positions to show the winch and the stem?

A. Yes, sir.

Q. And the hawse pipe?

A. Every bit.

Q. As I asked you to?

A. Everything of it. I think I got everything; I am not sure.

(Testimony of J. A. Hansen.)

Q. You had him go down on the 'tween deck and take those pictures and show the way the plates were bent, did you?

A. Yes, sir, everything; where the hawse pipe lays and the stem and everything broke.

Q. And he did what you directed him to do?

A. Exactly.

Q. And you told him to do what I directed you to get, did you?

A. Yes, sir, as near as I could get it.

Q. Yes. Were you there when he took those pictures?

A. Yes, sir; I was with him all the time.

Q. It was a little Jap boy, wasn't it?

A. Yes. All the time. I don't know how they turned out, because we had to use flashlights down below.

Q. Now that is neither here nor there. I just wanted to connect up, so as to get the accurate description. Now what did you do? Did you stand there at that chain brake all the time that that ship was coming at you?

A. Well, I just let go my anchor. I jumped right into the railing, and I hollered into the fore-castle, I hollered, "Get out, boys. Collision."

Q. Now where did she strike with reference to the boys you talk about?

A. It just hit one in the head there.

Q. I know, but it didn't kill him. He was in the—

(Testimony of J. A. Hansen.)

A. (Interrupting) The bunk on the firemen's side.

Q. The bunk on the firemen's side?

A. Yes.

Q. The most forward bunk?

A. Yes, sir.

Q. On the port side?

A. Yes. The firemen has bunks there on this side, up to about here (witness illustrating), and then I come kind of amidships on the ship there, and there is a bunk there, you know, and there is a bunk (indicating and illustrating).

Q. It was in the 'midship section forward bunks where she poked him out?

A. Right about there, where it touched his head. It didn't take his head, but it took his watch under his head, and threw him down.

Q. Now he was up on the ordinary seamen's bunk about four feet from the 'tween deck section, wasn't he?

A. About so.

Q. And it knocked that all down so he fell to the floor?

A. Yes, sir.

Q. And the beams right at that point, and the transverse sections and plates were twisted in, were they not?

A. Yes, bent right in.

Q. And did you have a photograph taken there where I asked you to?

(Testimony of J. A. Hansen.)

A. Yes; everything.

Q. Now then, that same boy took them there?

A. Yes, sir.

Q. Now while you were standing there you still remained, as I understand it—there is a companion way, is there not, right at the fore-castle-head about here (indicating), that goes down into the waist of the ship?

A. Yes, but it was closed up.

Q. On account of the piling?

A. Yes, sir.

Q. So you did not run right back onto the piling, did you?

A. No. I walked over here (indicating) and tried to watch that thing because I was kind of scared the rigging would fall over me, and I backed up and was watching the rigging.

Q. You backed off over to the side of your vessel?

A. Yes, sir.

Q. A little bit aft of where you were standing?

A. Yes, sir.

Q. Now did your anchor chains—now listen to what I say—did your anchor chain break, give any, when she struck you?

A. Well, of course the anchor chain broke. Them studs broke in the anchor chain. The anchor chain strained.

Mr. MINOR: What broke?

A. The studs in the chain.

(Testimony of J. A. Hansen.)

Mr. BRISTOL: The studs in the anchor chain.

Q. Now, standing there where you were at the time that the "Thielbek" struck you, could you see, or did you see the "Ocklahama," and if so, state where she came.

A. She come right up alongside at the time she struck us.

Q. She came right up alongside?

A. Right up by the forecastle and asked if we want any help, anything we want—I forget the words.

Q. Now when you say right up alongside, the minute, as I understand it, when the "Thielbek" struck, the "Ocklahama" came right up on your starboard bow; is that right?

A. Yes, sir.

Q. And along your ship on the starboard side?

A. Yes, sir, right by the forecastle-head.

Q. How much time elapsed between the time the "Thielbek" struck you before the "Ocklahama" came up alongside that way?

A. No time at all.

Q. No time at all?

A. She was right there; and the captain on the "Ocklahama" hollered out, anything we want, or "Want any help or anything?" I can't exactly remember what he said.

Q. How long was it, Mr. Hansen, before the "Thielbek" cleared you?

(Testimony of J. A. Hansen.)

A. Well, about three-quarters of an hour, I think.

Mr. WOOD: Three-quarters of an hour?

A. About so.

Mr. BRISTOL: Yes, that is what he said.

Q. Now then, tell me, have you seen the "Thielbek's" bow?

A. Yes, sir.

Q. And you know the shape of her stem or prow?

A. Yes.

Q. Describe to us whether or not, with the shape of the bow she had and the way she struck you, whether she did what sailors call ride, or whether she cut clean into you?

A. She cut clean into us.

Q. Cut clean into you?

A. Yes.

Q. Now what was the effect upon, and what shape in the way she cut you, did your port plates have? Were they turned outward and along the port side of your ship, or were they turned inward and to the inside of your ship?

A. They were turned inward.

Q. They were turned inward?

A. Yes, sir.

Q. And your stem turned over to the starboard?

A. Yes, sir.

Q. Is that correct?

(Testimony of J. A. Hansen.)

A. Yes, sir.

Q. Did you notice whether when the "Thielbek" struck you the bow of the "Thode" was depressed in the water, or could you tell that?

A. Well, of course I sent the carpenter right down to sound it.

Q. You sent the carpenter down to sound, and did he make a report to you?

A. Eighteen foot of water.

Q. Eighteen feet of water?

A. Yes.

Mr. WOOD: In the hold?

A. In the fore peak.

Q. (Mr. Bristol) You have collision bulkheads in the "Thode"?

A. Yes, sir.

Q. Aft of where this thing struck you?

A. Yes, between the peak and number 1 hold.

Q. Now she has a series of decks in there, hasn't she?

A. Five.

Q. Five decks. In that forward part between the collision bulkhead and the stem you had a lot of bunkers in there, didn't you?

A. Lots of stores.

Q. And you stored all your stuff in there?

A. Yes, sir.

Q. What became of that stuff?

A. Well, a lot of it went overboard, and lots of it was spoiled in the water. And they got some-

(Testimony of J. A. Hansen.)

thing back; we got three stanchions from the "Thielbek."

Q. Did what?

A. We got three gangway stanchions from the "Thielbek" that fell down into us.

Q. Now then, when you came on deck that morning, you took your station immediately at the anchor place, at the anchor winch that you have described, did you?

A. Yes. I went over—

Q. (Interrupting) Did you look around your ship any before you took that place?

A. Not much. I just got hold of the watchman and asked him if he called out the men I give orders for, and things.

Q. All the members of the crew that you required were on deck at the time, were they?

A. Yes, sir.

Q. Did you see whether the lights of the "Thode" were or were not burning?

A. They were burning bright, because that is always my—I don't know what I call it—always look after them at the time I am going out, and that is the rule, the man on the forecastle to have everything out about the lights.

Mr. BRISTOL: Take the witness.

CROSS-EXAMINATION.

By Mr. Wood:

Q. Now, Mr. Hansen, I will take it up from the time you dropped the anchors. I don't care much

(Testimony of J. A. Hansen.)

about it before then. You got an order from the pilot to let go of the anchors?

A. Yes, sir.

Q. Or anchor. And you think then you had gone about a thousand feet?

A. I should guess about so. It is hard to tell.

Q. Did you let the anchor go right away?

A. Right away. There wasn't a second after.

Q. It was just a turn of your wheel?

A. Just turn up on that turnbuckle (witness illustrating), and then it went.

Q. Was the starboard anchor in condition to let go quick, too?

A. Yes, sir, the same way. Here are the anchors in the hawse pipe, and then just the turnbuckle on; got no lashings—just open up and there it goes (witness illustrates).

Q. But your starboard anchor had not been out before that night, had it?

A. Not that night.

Q. Was it in position to let go as quick as the port anchor?

A. Yes, just the same.

Q. You let the port anchor go because you happened to be standing there?

A. Yes, I was right by it.

Q. Right by the wheel. Now how far away did you say the "Thielbek" was when you let go the anchor?

(Testimony of J. A. Hansen.)

A. Oh, I should think about a ship's length was all.

Q. You mean by that about three hundred feet, or something like that?

A. Between two and three hundred feet; I can't tell exactly.

Q. I see. And what was your object in letting go the anchor?

A. I let go the anchor after orders from the pilot. I never let go the anchor by myself.

Q. Well, why did he say let them go?

A. I don't know. I have no idea.

Q. Do you think it was a proper move to let them go?

A. Sure.

Q. What for, then? Why was it proper then to let it go?

A. Well, because there wasn't an answer to the other whistles there.

Mr. BRISTOL: Talk out now. He has got to get it down. Talk out.

WITNESS: Sure. I never seen any more.

Q. (Mr. Wood) At that time you had got an answer to your whistle, hadn't you?

A. Got an answer from the two whistles, but not the four whistles.

Q. No, not from the four whistles, but you had got an answer to your two whistles?

A. Yes, sir.

(Testimony of J. A. Hansen.)

Q. And how long after that answer did you let go the anchors?

A. I could not tell you the minute, but I let go the anchor and the four whistles went about the same time.

Q. About the same time?

A. Or just a little after. Either I let go just before the whistle or just after the first four; I can't tell.

Q. Almost the same time, you can't tell which?

A. No.

Q. All right. Well, how long was it about between the answer of the "Ocklahama" and when you let go the anchors?

A. Well, I can't tell you.

Q. Well, was it very quick, or was it quite a little while?

A. Oh, well, to tell the truth I can't say.

Q. Well, all right. How far do you think you went then?

A. How far do I think I went?

Q. Yes. How far did you move through the water?

A. Well, what did you say, through—

Q. (Interrupting) No; between the answer from the "Ocklahama"; you understand that?

A. Yes.

Q. And the time you let go the anchors, about how far did you travel through the water?

A. Well, hardly nothing.

(Testimony of J. A. Hansen.)

Q. Hardly nothing. Then it was a very short time?

A. Yes, it wasn't long.

Q. What?

A. Yes; it wasn't very long.

Q. Speak up so we can all hear you. Well now, at that time you had got an answer from the "Ocklahoma" and then you dropped your anchors, and I want you to tell me why you think that was the proper thing to do. That is what I want to know.

A. Well, you see I am on the forecastle-head, and I get my orders to drop the anchor and I have got to do it.

Mr. BRISTOL: No; you don't understand him. He is asking you now to tell him as an expert sea-faring man why under the conditions as you then saw them you think it was a proper thing to drop the anchor?

A. Well, because my opinion was at that time to let go the anchor. I thought, while that vessel there, she answered her whistle, but she come with full speed and she never seems to move a bit from the way I stand, or shift in the course, or anything, and I have to let go the anchor; she had very little headway.

Q. The "Thielbek" was coming right for you then?

A. Yes; you bet.

Q. And about a ship's length away?

A. About a ship's length.

(Testimony of J. A. Hansen.)

Q. And she was coming full speed at you?

A. That is what it looked to me. I can't tell if she was going or not, but she had full speed on.

Q. If you had been in command of the vessel yourself and there had not been any pilot on the bridge, and you had been standing there at the anchor windlass, would you have let the anchor go?

A. Yes.

Q. You would?

A. Yes, sir.

Q. You think it was the right thing to do?

A. I think it was the only thing they could do.

Q. That was holding your vessel; that is, you wanted to hold your vessel right where she was?

A. Yes, sir.

Q. Well, why did you want to do that when the "Thielbek" was heading right for you, only a ship's length away, why did you want to stay right in her course?

A. Because she had—we had given her whistles and were backing up, and that danger signal, and she never answered it, and I don't see any other way to do.

Q. Well, couldn't you have held your course and got out of her way?

A. Well, that would take her some other place then; it would take us amidships, and that would be worse.

Q. If you had continued on your agreed course,

(Testimony of J. A. Hansen.)

you think you would have received the blow amidships?

A. Well, not exactly amidships, but somewhere along there.

Q. Well, along in the waist of the ship somewhere?

A. Yes.

Q. Which side? Which side of your boat?

A. Well, I never think of that.

Q. What?

A. I never thought of that.

Q. Well, think of it now.

Mr. BRISTOL: Tell him, to the best of your judgment, if you know.

A. Well, I have to figure out that, and everything. (After a pause.) It must be on the same side it would have taken it.

Q. On the port side?

A. Yes.

Q. What?

A. Yes.

Mr. BRISTOL: Now, he is asking you if you had not dropped your anchor—

Mr. WOOD (interrupting): He answered it all right.

WITNESS: Well, you see, but from the way I was there I can't see anything. If I had been on the bridge I might have seen some other things. I can't see anything.

(Testimony of J. A. Hansen.)

Q. (Mr. Wood) From where you were standing you can't tell?

A. I can see, but I have got my hands full to look after my anchors.

Q. How could you tell then, standing on the stem of your boat how far on your starboard bow the "Thielbek" was? You said she was a quarter of a point, how could you tell that?

A. About a quarter. I can easily see, with anything, lights or anything on the boat, I can tell how far a ship is off; I can guess that.

Q. When you are standing on your own boat's bow?

A. On the boat from the place I was standing.

Q. You were over on the port side?

A. You see it ain't far over here. That anchor windlass isn't over a few feet away from here (witness illustrating).

Q. Your vessel is about how long?

A. 355 feet.

Q. 355 feet long; and when you are standing on her bow you can tell how many points to one side of her bow or the other a vessel is?

A. That is about what I think. I haven't got exactly the distance. From the bridge there I could see it better.

Q. And you can't tell what your course was from where you were standing?

A. No, of course not.

Q. You don't know what that was?

(Testimony of J. A. Hansen.)

A. No, sir.

Q. When you say that a vessel is so much, so many points on your starboard bow, you mean she is so many points off your keel line, didn't you, the line of your keel?

A. I don't know what you call that.

Q. That is what you start from.

A. I don't know what you call that in English. That is amidships. That is what the compass always goes by.

Q. The amidship line is the line of your keel, isn't it?

A. Yes.

Q. Well, when you say that a boat is so far off your starboard bow, you mean she is so far off of your amidships line; is that right?

A. Yes, sir, that is right.

Mr. BRISTOL: Keel line?

A. That is right. Of course the compass is setting upright on the keel line, you know.

Q. (Mr. Wood) Do you mean to say when you were standing—how far were you from the very stem of your vessel?

A. That is not very far.

Q. How far? You said it before, but I have forgotten.

A. I forgot how much. I guessed it, too. But let's see; about eight or ten foot. I think that is all.

Q. You think when you are standing eight or ten feet aft of the stem of your vessel on the port

(Testimony of J. A. Hansen.)

side, you can tell within a half a point how far to your starboard bow an approaching vessel is?

A. No; I said I guessed, from where I stand.

Q. Well, how close can you tell?

A. Well, I never took any bearings from up on the bridge, from the compass, but I supposed it might be about the same from the bridge.

Q. Well, the truth is, then, you don't know how far the "Thielbek" was on your starboard bow, do you?

A. That is only a guess. That is what I said. I think it.

Q. And it is a very poor guess, isn't it?

A. Is it?

Q. I am asking you. You haven't got anything to go by?

A. No, it ain't a poor guess.

Q. Well, how close is it then?

A. Because if I go, if I am sailing up and down the coast and I see a light on the shore or anything, I can always guess so and so is so many points on the bow.

Q. Now you say it is a pretty good guess and not a bad guess; how close can you come then? How close is your guess?

A. It is as close as it can be, I suppose.

Q. Well, is it within a half point?

A. Oh, yes. It is as close as can be.

Q. Well, how close?

A. How close do you want it?

(Testimony of J. A. Hansen.)

Mr. BRISTOL: Well, he said as close as it can be.

WITNESS: I said as close as can be. That is all I can answer.

Q. (Mr. Wood) I asked you if it is within a half point?

A. That is all I am going to answer.

Q. Is it? Yes, or no.

A. I say a quarter of a point or so.

Q. And can you tell it within half a point?

A. Certainly I can. I can tell within an eighth of a point.

Q. All right. From that position where you were? That is what you mean?

A. I mean what I said. I said it was about a quarter of a point on the bow. That is the nearest I can say, the closest I can say.

Q. I know it, but I want to know if from your position by the port anchor windlass there that night, you could tell how far off your starboard bow the "Thielbek" was, within an eighth of a point? That is what you just said. Now do you mean that?

A. Why, certainly I mean it. That is all, I think.

Q. All right, that is all.

A. I say that is what I think.

Q. That is all I want you to answer. Now, I suppose your object in letting go the anchor was to stop your vessel as quick as you could. That was it, wasn't it?

(Testimony of J. A. Hansen.)

A. Well, the vessel had hardly no headway at all. I could see that on the forecastle head.

Q. Well, you wanted to stop her?

A. They thought they had headway, I suppose, and they wanted to stop her; but that shows she didn't have any headway, because the turnbuckle wasn't tight on her.

Q. You wanted to stop her as quick as you could?

A. I never stopped her, Mr. Wood, when I dropped the anchor, because then I will break it. I go to check her up. Say on a ship like this, and I get an order, full speed, to let go my anchor; I can't check her up in 130 fathoms of chain, I can't check her up if she had full speed.

Q. Why didn't you put your brake on the chain this night?

A. Why didn't I put it on? Because I wanted to let go more chain.

Q. Why? You were afraid of breaking it?

A. Certainly. I don't know what was the trouble. I got to find out if she had much speed or not.

Q. I see.

A. That is the rule and regulation in ships when you go to anchor.

Q. I just want to understand it.

A. Well, certainly. I want to tell you. If I go to anchor I never check up the thing. I take the whole anchor windlass off of the forecastle head if I do.

(Testimony of J. A. Hansen.)

Q. If you had headway?

A. Yes.

Q. And this night you didn't know whether you had headway at the time or not?

A. Not exactly. I could see she had a little, but I didn't know how much.

Q. Yes. Now if you wanted to stop her as quick as you could, why didn't you let go the starboard anchor too?

A. No. One anchor ought to stop her.

Q. Wouldn't it have been better if you had let go the starboard anchor?

A. I was alone on the forecastle head, and I can't attend to two anchors.

Q. You didn't have time?

A. Time, but I can't attend to them. I can't attend to two anchors. How can I attend two anchors? How is that, with one there and one there (illustrating), and I have got to jump from this to this, and I might be killed at the same time I am jumping over here; there might something break, a chain knock me in the head.

Q. You didn't want to tighten this chain up; you just wanted to let it lay out, didn't you?

A. Why?

Q. I am asking you. That is what I thought you said.

A. Well, I want to see if the ship had any speed, any headway, and that is why I didn't want to tighten that up, because I didn't want to break the

(Testimony of J. A. Hansen.)

anchor loose, and I leave it loose, and she didn't have any headway.

Q. She didn't have any headway?

A. Just about fifteen fathoms was out.

Q. If you saw she didn't have any headway, why didn't you tighten up that chain?

A. Why didn't I tighten up the chain?

Q. Yes.

A. Because I didn't need to. Because it wasn't entirely—the brake wasn't entirely full open so the chain could pay out without breaking anything loose.

Q. I see. You had a little brake on?

A. Yes, certainly a little bit on, but it would take an awful strain to hold them on if they had any speed on. Once I was running the *Torras Skjald* in the Torres Straits at full speed, and let out thirty-five fathoms and could not check her.

Q. And you didn't let go the starboard anchor because you thought she didn't need it?

A. She don't need it.

Q. But you had plenty of time to let it go, if you had wanted to?

A. Certainly.

Q. What?

A. Yes.

Q. You mean you had plenty of time before the collision to have let that starboard anchor go if you had wanted to?

A. Well, you know, not so very plenty of time,

(Testimony of J. A. Hansen.)

because she was about a ship's length off and she come with full speed; so you can—

Q. (Interrupting) You didn't have much time for that?

A. I could let go it all right, but I don't need it.

Q. All right. Now when you saw the two red lights of the "Ocklahama" down there, and you say she was about fifteen hundred feet away?

A. I guess so; I can't tell exactly.

Q. And which side of your bow was she on then?

A. Well, a little on the starboard.

Q. How much?

A. About a quarter of a point.

Q. What did you think of it when you saw two red lights?

A. What did I think of them?

Q. Yes, sir.

A. I think what it was, because I see that happen before.

Q. What do you mean, you thought what it was?

A. I thought the "Ocklahama" had forgot to take in his red lights; and I have seen that done before.

Q. Well, the "Ocklahama" ought to have had her red light on it?

A. Oh, excuse me. The "Thielbek," I mean.

Q. Yes, you thought the "Thielbek" had forgot to take in her red light?

A. Yes.

Q. Did you know it was the "Thielbek"?

(Testimony of J. A. Hansen.)

A. I don't know it was the "Thielbek." Certainly not. I don't know it was the "Ocklahama," either.

Q. You knew it was a sailing ship in tow of a tug; is that right?

A. Yes, sure. Well, I knew it was the "Ocklahama," too, because I know her very well.

Q. I see. You knew it was the "Ocklahama" with some sailing vessel?

A. Yes.

Q. Could you see the "Ocklahama's" outline at all, then?

A. No, I could not see it, exactly see her.

Q. You could see enough of her to tell it was the "Ocklahama," though?

A. Oh, no. I could see—yes; I see the white line on her; I saw a kind of line on her, water line, or something, that must be the paint; but then it was closer.

Q. The only point I mean is, when you saw the two red lights about fifteen hundred feet away, you said you knew it was a sailing vessel coming up with the "Ocklahama," and I was just wondering how you knew it was the "Ocklahama"?

A. I don't know exactly then it was the "Ocklahama," but afterwards. So I could not tell then. She was too far off to see it was the "Ocklahama." I just see the rigging of the vessel.

Q. You just knew it was some tug?

A. Yes. And I say, I don't know sure whether

(Testimony of J. A. Hansen.)

it was the "Ocklahama," because she passed me when I went down the river, and then she had a schooner in tow, and I know pretty well how many tows there was in the Columbia River.

Q. Yes, I see. Where was the "Chinook" at this time you saw the two red lights?

A. "Chinook?"

Q. Yes; in relation to you?

A. She was laying swinging over the Astoria side.

Q. And how were you in relation to her?

A. Oh, I can't exactly say. I saw the vessel, the two ships clear the "Chinook" all right.

Q. You mean you saw the "Ocklahama" and "Thielbek" clear of the "Chinook"?

A. Yes, sir.

Q. And do you know how far you were from the "Chinook"?

A. How far I was?

Q. Yes.

A. Oh, I will say—

Mr. BRISTOL: (Interrupting) At what time, Mr. Wood?

Mr. WOOD: At the time he saw the two red lights, fifteen hundred feet away.

WITNESS: It is hard to tell.

Mr. BRISTOL: About where you were when you first saw the approaching two.

WITNESS: Yes, I know. I must be about eight or nine hundred foot.

(Testimony of J. A. Hansen.)

Q. (Mr. Wood) Eight or nine hundred feet of her?

A. I can't tell exactly. That is a guess.

Q. That is the closest you can come. And about how far were you from her at the collision?

A. The "Chinook"?

Q. Yes.

A. Oh, about two hundred foot, I guess—two or three hundred foot.

Q. Upstream or down stream, or abreast of her toward the land?

A. About abreast of her.

Q. And she was what way in the channel then?

A. Swinging over, over towards the Astoria side.

Q. With her stern toward the Astoria side?

A. Yes; and then she swung up a little more. She was on the swing of flood tide.

Q. She is a long boat, isn't she, 450 feet long?

A. I can't tell. I guess, yes, 450; that is right.

Q. Did you notice what part of her you were abreast of when you were standing on the forward part of your boat?

A. I never noticed.

Q. How far was the collision off the docks, you think, as near as you can tell?

A. Oh, I would say about six or seven hundred feet, I guess.

Q. Now you spoke of these studs on the anchor chain that broke.

A. Studs, yes.

(Testimony of J. A. Hansen.)

Q. I don't know what they are. Tell me.

A. There is an anchor chain (witness drawing); that is a fine one; that is the studs (indicating).

Q. Oh, I see. They brace the link?

A. Brace the links. They broke, flattened from the strain on the chain, and some of them broke in two.

Mr. WOOD: I see what it is.

Mr. BRISTOL: The links are kind of like that (counsel drawing), and this part comes down like this, and that is the stud right across there (illustrating).

WITNESS: Yes; that is right.

Q. (Mr. Wood) When the "Ocklahama" ran up alongside of you, right after the collision, which side of you did she run up on?

A. On the starboard side.

Q. On your starboard side. Where were you then?

A. On the forecastle head.

Q. And did she run right up close to you?

A. Close up.

Q. How close to the "Chinook" did she run?

A. Beg pardon?

Q. How close to the "Chinook" did she run?

A. I don't know. I never noticed that, because she come right up alongside of our bow close in. I could jump over.

(Testimony of J. A. Hansen.)

Mr. WOOD: Where is that sketch he made showing where he stood?

Mr. BRISTOL: I have it here in my hand, if you want it. I have got some notes on it here.

Mr. WOOD: I was just wondering whether he could draw about the same thing on this sheet of paper as he did there.

WITNESS: I can't draw anything on it, because I never noticed.

Q. Well, you can trace it?

A. Here is a pencil. What do you want to draw?

Q. All I want is to show about where you were standing.

A. Well, I have got it here.

Mr. WOOD: I want it on a separate piece of paper. You can draw it over that or not.

Mr. MINOR: He didn't draw that.

WITNESS: I never drew that. (Witness draws sketch.) That is exactly the same thing, though. That is the 'midship line (indicating on said sketch).

Q. That is about your position?

A. No, no; I never said that. That is the hawse pipe (drawing further on said sketch).

Mr. BRISTOL: Now make a cross about where you stood.

WITNESS: Now I could take the turnbuckle with my right hand, I was so close there I could take it with my right hand.

Mr. WOOD: The small cross on the diagram is where the witness stood, and the small circle—

(Testimony of J. A. Hansen.)

WITNESS: (Interrupting) That is not exactly the length, you know.

Mr. WOOD: I know, but the small circle near the port bow is the hawse pipe; the smaller of the two circles represents the hawse pipe and the larger of the two circles represents the brake.

WITNESS: But that is not exactly right there. That ought to be about the line, you know, but it does not cut much figure.

Mr. WOOD: I know, but that is pretty close. The point which I marked "A" you intend for the stem of the "Fagelund"?

A. Yes.

Q. Now will you again draw, as you did before, about where the "Thielbek" cut in. You showed about her angle there and about where she cut.

A. About five or six degrees.

Q. That is about the angle she came at?

A. About that, yes.

Mr. BRISTOL: Mark that line "B," Mr. Wood.

WITNESS: That is about five or six degrees, as near as I can get it. I might have a little too much on it. About six degrees, half a point.

Mr. WOOD: Line "B-C" represents about the angle at which the "Thielbek" cut in. I offer that.

Said pencil sketch was thereupon marked Claimant's Exhibit 4.

(Testimony of J. A. Hansen.)

FURTHER CROSS EXAMINATION.

By Mr. Minor:

Q. Could you form any estimate of the speed of the "Thielbek"?

A. No, sir; I could not see it, but it seems to me she was with a good speed on. I can't say how many knots, and things like that. If anybody looks at the hole, they would think she must have had.

Q. Now could you form any idea of how long it was between the time that you first saw the "Thielbek" and the time of the collision?

A. I first saw the "Thielbek" at the time of the collision? About seven or eight minutes, eight or ten minutes. It is hard to tell the minutes. Between seven and ten minutes, though.

Q. Between seven and ten minutes?

A. That is very hard to tell exactly the time. It is just guesswork on time.

Q. Did you see her before the first whistle was blown by the "Fagelund"?

A. No. I saw her just—I sang out for her just about the same time as the first two whistles went, but I don't know if they hear what I sing out or not, because the two whistles went right then.

Q. Now did you testify how far you thought the "Thielbek" was from you at the time the second whistles were blown?

Mr. BRISTOL: That is the second two whistles?

Mr. MINOR: The second two whistles.

A. Now, I think I did, but I have forgot if I did.

(Testimony of J. A. Hansen.)

Q. Well, how far do you estimate she was away from you at that time?

A. The first or second whistle?

Q. When the second signal was given by you, the one that she answered?

Mr. BRISTOL: The one that she answered. He means when she answered.

A. Oh, I see. Well, it could be a little over a ship's length, or four hundred foot or so. I can't guess it exactly. I would think about that, anyhow; about it.

Q. Did you state how long a time you think elapsed between the first signal which your boat gave and the second signal which your boat gave?

A. How long a time it was between?

Q. Yes.

A. No. It just wasn't long; some seconds, between the first two and the second two; shortly afterwards.

Q. You can't estimate that time?

A. No. That is impossible for me to do it.

Q. Well now, can you tell me how long it was between the second signal given by your boat and the danger signal given by your boat?

A. Well, that wasn't very long; so how many minutes I can't say. It wasn't very long; I know that.

Q. How far do you think your boat had traveled between the time that it gave the first signal and the time it gave the second signal?

(Testimony of J. A. Hansen.)

A. The first signal and the second signal?

Q. Yes; the signal which was not answered, and the time it gave the signal which was answered?

A. It could not be hardly any; very little.

Q. Well, if you can estimate it, estimate it.

A. Well, you see, a couple of seconds between the signal and then it can't be very much. Of course she had a mighty little speed on her, and it can't be very long she was going.

Q. You think it was only about two seconds between the two signals?

A. Well, a little; that is about all. It is hard for me to tell the time between the signals. I hear the signals, but I can't guess the time between them, because I was on the forecastle head, and watching out for things there.

Q. Now can you tell me about how far you think the "Thielbek" was away when the first signal was given by your boat?

A. That is what I just answered, wasn't it?

Mr. BRISTOL: No. He asked you how far she was away the second signal. Now he wants to know how far she was away the first whistle when the first two whistles were blown.

A. Well, they were blown about the same time; so there wasn't much difference.

Q. (Mr. Minor) Then let me see if I understand you, Mr. Hansen; I am not sure whether I do or not. I understand when you first saw the "Thielbek" you

(Testimony of J. A. Hansen.)

thought she was about twelve hundred or fifteen hundred feet away?

A. Yes, about.

Q. And the time the second signal was given, you think she was about a ship's length away?

A. The second signal?

Mr. BRISTOL: The second two whistles.

Mr. MINOR: The second two whistles.

Mr. BRISTOL: That is what you said.

Mr. MINOR: I want to see whether I have got it right or not.

Mr. BRISTOL: That is what he said.

WITNESS: Well, I can't guess that distance, because I never pay much attention to the distance. Just first I saw her and the time I dropped the anchor, that is the time I can say about the nearest it can be the distance.

Q. (Mr. Minor) Well, you dropped the anchor just after the second whistle was blown, I understand?

A. Yes. Then I was about a ship's length off.

Q. Then you were about a ship's length off; and then when you first saw her you think you were about between twelve and fifteen hundred feet away?

A. Yes.

Q. You can't say how far you were away when the first signal was given?

A. No, but I can't be very far, because the signals was given inside of a few minutes, the whole

(Testimony of J. A. Hansen.)

thing, so it can't be very far. The whole thing, the whole business from the first two signals to the last four signals was done in no time.

Mr. BRISTOL: Was what?

A. It wasn't a very long time.

Q. (Mr. Minor) What is the speed of your boat, I mean the rate at which she travels when she is at full speed?

A. How much she travels at full speed?

Q. Yes.

A. In open sea, you mean?

Q. Yes.

A. Oh, about nine knots, nine and a half.

Q. And how far does she travel at half speed?

A. Oh, about seven.

Q. About seven at half speed?

A. Six or seven.

Q. Well, had she gotten up to half speed at the time the order to stop was given?

A. No; very little; by the looks from me she had very little headway.

Mr. MINOR: That is all.

FURTHER CROSS EXAMINATION.

By Mr. Wood:

Mr. WOOD: I want to ask one thing I forgot.

Mr. BRISTOL: Go ahead. That is what he is here for.

Mr. WOOD: On this diagram this distance here represents five or six degrees?

(Testimony of J. A. Hansen.)

Mr. BRISTOL: By "this diagram" you mean Claimant's Exhibit 4.

WITNESS: That is the degrees, yes, on the bow.

Mr. BRISTOL: The line "B-C" represents where?

A. The degrees on the bow.

Mr. WOOD: All I want to get at is, I don't know myself how many degrees are in a point.

WITNESS: There is eleven degrees in a point; eleven degrees and fifteen minutes in a point.

Mr. WOOD: Then what would be a quarter of a point on your starboard bow? That is what I want to know.

WITNESS: A quarter ought to be half of a half of one. That is a quarter. That is the nearest I can put it up. That is a good half point up there.

Mr. BRISTOL: Let's have this identified. Witness marks line on starboard bow. Put the letter "Y" here to indicate what he means by a quarter point off the starboard bow.

Mr. WOOD: That is right.

WITNESS: And you know with eleven degrees and fifteen minutes in a point; so that is as near as I can put it.

Mr. WOOD: That is all. We ought to erase that little line there, too; because it is confusing.

Mr. BRISTOL: I think so, too; the little one he put there to illustrate the half point.

(Testimony of J. A. Hansen.)

RE-DIRECT EXAMINATION.

By Mr. Bristol:

Q. Mr. Hansen, I want you to tell us now from what you saw there whether there was at the time of the collision, and noting the position of the vessels, the dredge on your starboard beam or abreast of you about, and the docks of Astoria on your port beam and abreast of you about, was there or was there not sufficient room for the "Thielbek" and her tow to go either side of you?

A. Yes, plenty, so far as I know about the channel. I don't know.

Q. You are not dealing with the depth of water. I am just asking you about distance.

A. All right.

Q. So far as the distance is concerned—

A. (Interrupting) Plenty room.

Mr. WOOD: At what time, Mr. Bristol?

Mr. BRISTOL: At the time of the collision.

WITNESS: The collision.

Q. (Mr. Bristol) Now Mr. Wood asked you very particularly about this anchor business.

A. Yes, sir.

Q. And why you dropped it and why you thought it was a good thing to drop it, and so forth. Now I want you to tell me, if you will, please, having regard to the position you were in and where you saw the "Thielbek" a quarter of a point over the starboard bow, where the "Thielbek" would probably have struck you from what you saw, if you had

(Testimony of J. A. Hansen.)

not dropped your anchor and if you had not stopped your engines, and if you had kept right along on your course.

A. It would have taken us right along on the starboard side, certainly.

Q. About where, as near as you can estimate it?

A. Well, taken her along a little aft of the rigging.

Q. Now which rigging?

A. The starboard rigging.

Q. Now what you mean by that is the shrouds of the foremast?

A. Yes, sir.

Q. Now therefore, she would have struck you on your starboard side, as you saw her course coming, if she had held to her course and you had held to your course, she would have struck you about in the starboard rigging; is that correct?

A. About that, yes.

Q. Now then, if you had not dropped your port anchor and you had let your ship's head pay off the whole distance without any anchor at all, and the "Thielbek" had kept upon the same course as you saw her, where would she have probably struck you then, having regard to the fact now that your ship was backing and that you had stopped her, as I understand, and that she had no headway, and assuming, if it be the fact, that your ship's head would swing when her screw was backing and the

(Testimony of J. A. Hansen.)

"Thielbek" had kept on her course, then where would you have been struck?

A. I didn't catch exactly what you mean there.

Q. Well, I will illustrate it by taking the roll of charts. It is true, is it not, that when you back the ship with a right hand screw it has a tendency to throw her stern to port?

A. Yes.

Q. Therefore, her bow goes to starboard, does it not?

A. That is true.

Q. That is true, isn't it?

A. Yes, sir.

Q. That is true on the "Thode," isn't it?

A. Yes, sir.

Q. Now assuming that you had not dropped any anchor but that you were going full speed astern and had not dropped this anchor, where in your opinion, judging from the facts as you saw them, would the "Thielbek" have struck your ship?

A. Well, if she was going full speed astern and swung as she usually does, she will go to port, swing over to port with the stern and over to starboard with the bow, she would take us on the midships.

Q. On the port side?

A. Yes, sir.

Mr. BRISTOL: That is all.

(Testimony of J. A. Hansen.)

RE-CROSS EXAMINATION.

By Mr. Wood:

Q. I don't exactly understand him. When I asked you, you said if you had not dropped the anchor you would have been struck on the port side nearly, somewhere around the midships; that is right?

Mr. BRISTOL: That is what he says now.

A. If it was backing.

Q. Now what did you mean a few moments ago when you said under certain conditions you would have been struck on the starboard side about midships?

Mr. BRISTOL: That is if he held his course, I said.

WITNESS: I was talking about going ahead and holding the course.

Mr. WOOD: Without backing, you mean?

A. Without backing, yes, sir.

Q. That is, if you had held your course at the time the whistles were blown and the "Thielbek" had held her course—

A. (Interrupting) Yes.

Q. (Continuing) as she was at the same time, you would have been struck on the starboard side?

Mr. BRISTOL: That is right.

A. That is right.

Mr. BRISTOL: You have got the correct understanding of it, Mr. Wood.

Mr. WOOD: All right. I just wanted to get it.

(Testimony of J. A. Hansen.)

Q. Captain Hansen said that sometimes the "Thode" on her backing propellor would swing one way and sometimes the other.

A. Yes. Do you know why?

Q. No. I would like to know.

A. Because of the tide in the river. It just depends on which way the tide is going.

Q. I see. And this night—

A. (Interrupting) Sometimes now in the Columbia River it goes like the dickens in the middle water, and when you come over to the side it goes all away and slackens.

Q. This night did you notice her swinging to starboard after the order was given to back?

A. I never heard the order to back, but I know that she swung to starboard a little.

Q. I see; you didn't know she was backing?

A. Of course I could see she was backing by the way she swings to the starboard side.

Q. I know, but did you know she was backing?

A. Oh, no; I could not know that, because I was on the forecastle head.

Mr. WOOD: All right. That is all.

And further deponent saith not.

Signature waived.

YENS BERNT TOLLEFSEN was next produced as a witness on behalf of the libellant, and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bristol:

Q. Mr. Tollefsen, what is your occupation?

A. Chief Engineer of the "Thode Fagelund."

Q. How long have you been such an engineer?

A. I have been first engineer about thirteen years.

Q. About thirteen years?

A. At sea.

Q. And in that time you have navigated altogether on the high seas?

A. Yes, sir.

Q. What kind of engines have you been operating?

A. Triple expansion.

Q. Is that the kind that the "Thode" has got?

A. Yes, sir.

Q. Her engines and boilers are the Blair type, are they not?

A. Yes, sir.

Q. She has the Mehan's telegraph system?

A. Well, the system, it is the ordinary English system.

Q. Yes; you don't know whether it is Mehan's or not?

A. No.

Q. Were you on the "Thode," Mr. Tollefsen, on Sunday morning, August 24th?

(Testimony of Yens Bernt Tollefsen.)

A. Yes, sir.

Q. What time were you up?

A. I was called about a quarter of three. I was down in the engine room before three.

Q. Before three. Now you said, I think, that you have triple expansion engines on the "Thode," and she has got a circulating system, hasn't she; circulating system condensers?

A. Yes, of course she has them.

Q. Yes; and your circulating pump is connected right directly with your engine, isn't it?

A. Yes.

Q. That is, you do not operate an independent circulating pump on the "Thode"; you do not operate with an independent engine?

A. No.

Q. You don't operate your circulator. How long does it take you, if you get notice that you are going to leave at a time, how long does it take you to get your engine conditioned so that you can promptly turn her over when you get a signal? That is, I mean by that now, not as if she was working full speed and warmed up, but after your boat has been at anchor or at rest and you get notice from somebody that you are going to leave at such a time, you come down in your engine room, how long, if any time, does it take before you get your engine into working condition?

A. We warm up the engine and have it ready to start at that time I have been told.

(Testimony of Yens Bernt Tollefsen.)

Q. Yes. Well, how long does it take to warm her up?

A. Takes one hour.

Q. It takes an hour. Now who had looked after that matter before you came on the "Thode."

A. The third engineer.

Q. That is Johansen?

A. Yes, sir.

Q. Now then, after you get a stand-by bell, how long does it take from the time you get the signal to execute the order, of say slow speed ahead?

A. Just a few seconds.

Q. What?

A. It would take just a few seconds to commence to start the engine.

Q. Well, how many seconds? What length of time? In other words, with your circulating pump directly attached to your engine, the fact that you are working a high pressure and an intermediate and a low pressure cylinder, and that you have to work certain rods and valves, now how long does it take from the time you get a stand by bell until you can condition that engine so as to promptly answer signals, assuming that she has been warmed up before you get on duty?

A. It will take just about three to five seconds.

Q. Now on the morning in question, did you take note of the time when you came into the engine room? Have you a clock in your engine room?

A. Yes, sir.

(Testimony of Yens Bernt Tollefsen.)

Q. Did you take note of the time when you came down the companion ladder into your engine room, as to what time it was?

A. When I came down it was about three o'clock, before three o'clock.

Q. Before three o'clock when you got in the engine room; did you notice what time it was by your engine room clock when you got the stand-by bell?

A. About three o'clock.

Q. About three o'clock. Now what do you mean by "about"? Was that after three, or before three, or how many minutes before or after?

A. That would come in a few seconds after.

Q. A few seconds after three. Now did you notice when and at what time you got the first signal?

A. Well, the stand-by bell was the first signal, and then that was about three o'clock.

Q. All right. Now when did you get the second signal, and what was it?

A. About 3:20.

Q. About 3:20; and how did you fix that time?

A. I was looking at the clock, 3:20; I took that time, 3:20, and just soon after the bell rang, the telegraph rang the bell.

Q. Who stood at the telegraph in the engine room?

A. The third engineer.

Q. The third engineer, Johansen?

(Testimony of Yens Bernt Tollefsen.)

A. Yes, sir.

Q. Now that telegraph has printed on it the orders, hasn't it?

A. Yes, sir.

Q. And it rings a bell, and when you get what you call your stand-by signal, there is a lever on that thing in your engine room?

A. Yes, sir.

Q. And your third engineer, who was there at that signal box, he pulls the lever over to what it showed when the gong rang on his side? In other words, if it said "stand by" he placed the lever over to "stand by" and signals back; is that right?

A. Yes, sir.

Q. Is that what he did?

A. Yes, sir.

Q. Now at 3:20 you got what signal?

A. Slow speed ahead.

Q. Slow speed ahead. Did you see that signal on the gong?

A. Yes, sir.

Q. Did you see it on the gong?

A. Yes, sir.

Q. Did Johansen answer it correctly?

A. Yes, sir.

Q. What did you do with your engine?

A. Well, then, I started.

Q. And did she commence to turn over as soon as you gave her steam?

A. Yes, sir.

(Testimony of Yens Bernt Tollefsen.)

Q. How many revolutions did you turn her when you say slow speed ahead? Do you turn her over to her full capacity? How fast do you turn her at slow speed ahead?

A. About thirty revolutions.

Q. About thirty revolutions. And you have to go through the process of feeding your steam through the high pressure cylinder and opening various valves to get everything working up, eh?

A. Well, the first few turns of the engine is very slow?

Q. The first few turns are very slow?

A. And for to get all the drain water out of the cylinders; then I will say the first few revolutions is less than thirty.

Q. Less than thirty. That is what I want to get at. How long would it take, Mr. Tollefsen, after you opened your throttles and pulled your various levers, how long would it be before she would work up to the full number of revolutions of thirty for slow speed ahead?

A. To full speed ahead?

Q. No, to slow speed; after you first opened the throttle now, and this water commences to work out, this condensation works out, how long would it be before she would get up to her speed of thirty turns for slow ahead?

A. I would say half a minute.

Q. Half a minute. Then she would be working at slow speed ahead where you said here she would

(Testimony of Yens Bernt Tollefsen.)

be working about thirty turns to the minute; is that right?

A. Yes, sir.

Q. Now how big is your screw?

A. Oh, you mean in diameter?

Q. Yes.

A. Sixteen feet ten inches.

Q. Sixteen feet ten inches. What is the pitch?

A. Seventeen feet.

Q. Seventeen feet net, is it?

A. Yes, sir.

Q. Now what is the horsepower of your engine?

A. The ordinary horsepower we run with, it is from 1400 to 1500.

Q. 1400 to 1500?

A. 1450 or 1500, and sometimes more than 1500, but you can say 1400 or 1500.

Q. Yes. Now when she is running on slow speed ahead and about thirty turns to the minute, about what power does she develop at the screw?

A. That must be very little power.

Q. Very little. All right. In comparison to her full capacity, is what I mean. Now then, after you had got her working at slow speed ahead, how long did you work her slow speed ahead before you got the next signal?

A. About five minutes.

Q. Then what signal did you get?

A. Half speed ahead.

Q. Half speed ahead. Now when she works at

(Testimony of Yens Bernt Tollefsen.)

half speed ahead you give her more steam, you open up your valves a little wider, and then how many revolutions does she turn?

A. Forty-eight to fifty.

Q. Forty-eight to fifty. Now how long did you run on half speed ahead before you got the next signal?

A. Well, it was five minutes, about five minutes.

Q. About five minutes?

A. Yes.

Q. Then what signal did you get?

A. Stop.

Q. And what did you do then? Did you stop immediately?

A. I stopped.

Q. Stopped ?

A. Yes.

Q. Now your engine stops promptly, doesn't she? The minute you shut your steam off she stops, or does she?

A. I beg your pardon, sir.

Q. I say, your engine stops promptly, does she, when you shut the steam off?

A. Yes, sir.

Q. Now what was the next signal you got?

A. Full speed astern.

Q. Then what did you do? What did you do then?

A. I reversed the engine, put the steam on and let the engine run full speed astern.

(Testimony of Yens Bernt Tollefsen.)

Q. Astern?

A. Yes, sir.

Q. Now how many revolutions would she turn over at full speed astern?

A. About the same as full speed ahead.

Q. Well, all right. You haven't told me that yet. What will she turn over full speed ahead?

A. About sixty-two, sixty-three.

Q. Sixty-two or three?

A. Or sixty-four.

Q. When she is turning full speed ahead and your ship has gathered way, and you continue with that speed, how fast does she drive with a sixteen-foot-ten screw, with a seventeen-foot pitch, the "Thode Fagelund," through the water?

A. About nine miles.

Q. Is that when the "Thode" is loaded or when she is light?

A. When she is loaded.

Q. When she is loaded?

A. Yes.

Q. Is that in miles or in knots, now; which is it?

A. Yes, sir.

Q. In miles or knots?

A. Well, that is just the same.

Q. No, it is not the same.

A. Well, I thought it was the same. I say nine miles, not knots.

Q. You mean it the same?

(Testimony of Yens Bernt Tollefsen.)

A. Yes.

Q. All right. Then you were going full speed astern on this last signal. How long did you run full speed astern?

A. From close up to two minutes.

Q. Who made the entries in your engine log book?

A. Myself.

Q. Did you make them correctly and in accordance with what you have just related here under oath?

A. Yes, sir.

Q. And did you give them to the Captain?

A. Yes, sir.

Q. And you entered them in your log book?

A. Yes, sir.

Q. And you gave your log book to the Captain?

A. Yes, sir.

Q. You don't know whether he brought it here to have it translated, do you, or not?

A. Oh, he took it ashore some place.

Q. He took it ashore some place?

A. Yes.

Q. You don't know where he took it?

A. No, sir.

Q. You have made no changes in that log book, have you?

A. No, sir.

Q. And it truly and correctly recorded what happened in your engine room, did it?

(Testimony of Yens Bernt Tollefsen.)

A. Yes, sir.

Q. Now when you got all these signals, I understand that you junior, Johansen, stood at the signal box?

A. Yes, sir.

Q. And you heard the signals and he repeated them and you executed them promptly, is that correct?

A. Yes, sir.

Q. Did you know when you got this full speed astern bell, did you feel anything or hear anything to indicate what had happened down there?

A. No; no, sir; nothing.

Q. Did you know why you got a full speed astern bell until afterwards?

A. Beg your pardon, sir.

Q. Did you know at the time you got the full speed astern bell what it was for? Did you know why you got that signal?

A. Well, I thought it was full speed astern for to swing around for to get the bow out in the river.

Q. That is what you thought in the engine room?

A. That is what I thought.

Q. Now how long was it, as near as you can give me the time now, that you were working your engine full speed astern before anything happened?

A. Why, I don't quite understand what you mean, could happen.

Q. Well, I will put it this way to you: What I want to get at is this: I want to fix the time, if you

(Testimony of Yens Bernt Tollefsen.)

can tell me how long you were running your engine full speed astern before you were struck by the "Thielbek"?

A. I said very few seconds, less two minutes.

Q. A very few seconds, less two minutes?

A. Yes, sir.

Q. Now could you feel the shock of the collision in the engine room?

A. Yes, sir.

Q. Now then, you estimate the two minutes from the time you got the full speed astern until you felt the shock; is that the way you fix the time?

A. Yes, sir.

Q. How much steam do you carry? What is your allowed weight?

A. One hundred and eighty pounds.

Q. What have you got, Blair boilers too?

A. Yes, sir.

Q. That engine that you have got there is in good condition, isn't it?

A. Yes, sir.

Q. And it was in good working condition the morning of the accident, wasn't it?

A. Yes.

Q. And are you conscious, or do you know of anything wrong with any of the machinery or boilers of the "Thode Fagelund" on that morning before the collision?

A. Nothing wrong.

Q. I understand you to say that the engine

(Testimony of Yens Bernt Tollefsen.)

responds promptly to signals which by the manipulation of the machinery you communicate to the engine?

A. Yes, sir.

Mr. BRISTOL: Take the witness.

Mr. MINOR: I have no questions. Are you going to offer the log in evidence?

Mr. BRISTOL: I didn't offer it in evidence, but I will. I am perfectly willing to give it to you gentlemen. I have it here. I had three copies made.

(Mr. Bristol here produced copies and exhibited same to Messrs. Minor and Wood.)

CROSS EXAMINATION.

By Mr. Wood:

Q. Mr. Tollefsen, do you understand anything about the conditions of the water or tide that night, or anything like that?

A. No.

Q. Do you know what they were?

A. I don't think.

Q. Well, can you tell me this: If the tide had just commenced to flood there, about how fast you would be going through the water, having worked your engines as you did up to the time you got the reverse bell, and the "Thode" being loaded?

A. No, sir, I can't tell anything about the tide.

Q. I say, can you tell anything about your speed through the water, having worked your engine up from the vessel being dead still in the water up to the time you reversed?

(Testimony of Yens Bernt Tollefsen.)

A. Yes, sir; I can tell you the ship's speed through the water by the propellor.

Q. Yes. Well, about what speed would she be making at the time you got the reverse bell?

A. Then we take the revolutions, the number of revolutions, and we reckon the number of revolutions and take the pitch of the propellor and see how many feet she has gone. We can see that.

Mr. BRISTOL: That is why I gave you the pitch and the number of revolutions; see?

Q. (Mr. Wood) Well, how fast was she going at the time you got the reverse bell?

A. Well, will you kindly give me a lead pencil.

Mr. BRISTOL: The figures are in there, Mr. Wood. We put those in for the purpose and in order to have them. They are much better testimony than the witness can give you, because you have got the figures.

Mr. WOOD: He is an expert and can figure it out.

Mr. BRISTOL: Well, he is not an expert mathematician.

Mr. WOOD: Well, he can tell us.

WITNESS: Well, we find out how many revolutions.

Mr. WOOD: I know how you do it; I just want you to tell me about how fast you were going through the water.

WITNESS: Well, how fast. Well, I can't tell before I reckon it out.

(Testimony of Yens Bernt Tollefsen.)

Q. Well, reckon it out.

A. Well, you mean what time?

Q. At the time you got the reverse bell.

A. The reverse bell?

Q. The reverse full speed astern.

A. Well, she was stopping then.

Mr. MINOR: But before you stopped, he means.

Mr. WOOD: No.

Mr. MINOR: Just before you got it.

Mr. WOOD: You were going at half speed, weren't you? You were going under a half speed bell?

A. Yes, sir.

Q. Then you got a reverse bell?

A. Yes.

Q. Half speed astern?

A. Half speed and stop. It was a half speed ahead.

Q. Yes.

A. And then stop.

Q. Yes.

A. And very quick after it was full speed astern.

Q. I see. The stopping bell was just an intermediate bell?

A. Yes.

Q. Well, at that time that you got the stop bell, how fast would you be going through the water?

A. Well, we will see how many revolutions we have made since.

Q. Go ahead.

(Testimony of Yens Bernt Tollefsen.)

A. Well, you see five minutes slow times number of revolutions thirty; that is 150 revolutions slow speed. And then we got half speed, I said about five minutes. I said the revolutions is forty-eight to fifty when she is at sea.

Q. Yes.

A. Now in the river I will say about forty-eight revolutions. She would go 390 revolutions. Now we have got the pitch of the propeller. She had gone 6,630 feet through the water, if no slip.

Q. What do you mean by "if no slip"?

Mr. BRISTOL: Slip of the propeller screw. In other words, if the screw is technically and theoretically perfect and does not slip on the water, and there is no resistance to the ship, then she will move 6,630 feet.

Mr. WOOD: Is that what you mean, Mr. Tollefsen?

A. Yes, sir.

Q. If everything is working right, she will move that much.

Mr. BRISTOL: No, that is not what he means at all.

WITNESS: I mean if the propeller had gone through the water straight ahead she should have gone 6,630 feet through the water, but according to the slip of the propeller, she had not got so much.

Q. I see. Then about how much has she got, allowing for the slip of the propeller?

A. It is about fifteen per cent.

(Testimony of Yens Bernt Tollefsen.)

Q. You deduct that. You take that fifteen per cent off?

A. Well, I will do it. That is 994 feet.

Q. 994 feet?

A. Yes, sir.

Q. Is the distance she would travel?

Mr. MINOR: That is the slip.

Mr. WOOD: Oh, that is the slip. I see.

WITNESS: She had gone through the water what I think 994 feet.

Q. At the time you got the stop bell?

A. Yes.

Q. Is that on the theory of the water being still, or is that—

A. (Interrupting) Well, if the water was still, yes, sir.

Q. Now, about what speed would she be making?

Mr. BRISTOL: Of course, I don't want to bother you, Mr. Wood, but it seems to me it is perfectly obvious when a man gives the time and the distance, the engine speed is a mere calculation. It is only confusing to all of us and to the witness to keep this up.

WITNESS: Let's see now. If she goes—

Mr. BRISTOL (interrupting) Take your number of minutes, Mr. Tollefsen. Now you have got 994 feet distance and you have gone ten minutes.

WITNESS: How much I go within one minute?

Mr. BRISTOL: Now what he wants to know is

(Testimony of Yens Bernt Tollefsen.)

the rate she was moving; so it is a mere matter of mathematical calculation, I submit, from the testimony.

WITNESS: I don't know if I do it right or not. That seems to me very little. That is one mile.

Mr. WOOD: One mile an hour, you mean?

A. Yes, I mean less one mile an hour.

Mr. WOOD: A little less than one mile an hour?

A. But I should think it would go—I should think she would go one or two miles.

Mr. BRISTOL: The way you have calculated it you have got sixteen hundredths of a knot on the paper that Mr. Wood had you make the calculation on; you have got sixteen hundredths of a knot in distance.

Mr. WOOD: You think she would be going at that time about one or two knots an hour?

A. Well, you see, of course I wasn't giving it exactly.

Mr. WOOD: I know, but I am getting your best judgment on it.

A. Well, this is what I have got. This is not quite one-sixth. That is, of course, less. I have got less than one mile.

Q. Then how much have you got there?

A. Nothing, point one six mile.

Q. An hour?

A. Yes.

Q. Do you think that is correct?

(Testimony of Yens Bernt Tollefsen.)

A. Well, it seems to me to be very little.

Q. If she were going one or two miles an hour through the water and you got a bell full speed astern, how long would it take you to come to a dead stop?

Mr. BRISTOL: Now I object to that question, because it assumes facts not in evidence, and because it is manifestly against the very calculation that counsel had the witness make, his figures showing that he went less than a mile through the water at the time, and now counsel puts his question, "If you were going between one and two miles through the water."

Mr. WOOD: Now go ahead.

Mr. BRISTOL: And upon the ground that any conclusion based thereon would be manifestly against the evidence.

Mr. WOOD: Answer. Answer.

A. You mean how long time it will take for to stop her?

Mr. WOOD: Yes.

WITNESS: If she go that speed?

Mr. WOOD: If she was going one or two miles an hour through the water and you got a reverse bell, full speed astern, how long would it take to bring her to a dead stop in the still water, the "Thode" being loaded?

A. Yes. Well, that speed I should believe about one minute; I should believe so.

(Testimony of Yens Bernt Tollefsen.)

Q. You say you noticed the shock of the collision?

A. Yes, sir, I feel it.

Q. Did you look at the clock then?

A. I just took the time. I looked at the clock when I noticed the shock; I took the time.

Further this deponent saith not.

Signature waived.

HARDWIG JOHANSEN was next produced as a witness on behalf of the libelant, and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bristol:

Q. What is your occupation?

A. I don't know much English.

Q. I understand. But you know what I say? What is your occupation, what is your job?

A. Oh; third engineer.

Q. On what boat?

A. "Thode Fagelund."

Q. How long have you been third engineer?

A. One year.

Q. Were you on the "Thode Fagelund" August 24th, Sunday?

A. Yes, sir.

Q. What time were you there?

A. From 12 o'clock Sunday morning.

(Testimony of Hardwig Johansen.)

Q. From 12 o'clock Sunday morning until when, from 12 o'clock until when?

A. Until five six in the morning.

Q. Until five six in the morning; you had that watch?

A. Yes, sir.

Q. You had the engine room watch?

A. Yes, sir.

Q. Now what did you do with the engine on the "Thode Fagelund" that morning?

A. Before I started half past two, started to put the steam on the engine and moving her forward and back.

Q. How long did you do that?

A. About a quarter, fifteen minutes.

Q. Fifteen minutes. That was for the purpose of warming the engine up, was it?

A. Yes, it was.

Q. What did you work her fifteen minutes for?

A. For to get her forward and back.

Q. Get her forward and back?

A. To get the engine to work all right.

Q. Well, did the engine work all right?

A. Yes.

Q. Now when did Tollefsen come down there?

A. Ten minutes before three.

Q. And what did you do then? What did you do then? What did you do after Tollefsen came down?

(Testimony of Hardwig Johansen.)

A. Why, I filled up the oil holes all over about the engine.

Q. Then what did you do?

A. I stand by the telegraph.

Q. And what did you do standing by the telegraph? What did you do there? What did you do there?

A. I just stand there waiting for orders on deck.

Q. All right. Now what orders did you get from the deck?

A. Well, we got stand by telegraph.

Q. Yo got stand by, by the telegraph; then what did you do with the telegraph?

A. I saw it again.

Q. Just say what you did.

A. I took the telegraph.

Q. Up to the same signal you got?

A. Yes.

Q. And communicated that back to the Captain on the bridge?

A. Yes, sir.

Q. And you told Tollefsen what the signal was, did you?

A. Yes, sir.

Q. Now what was the next signal you got?

A. Slow speed ahead.

Q. What did you do with that signal? Did you tell Tollefsen about that?

A. Yes, I told Tollefsen that.

(Testimony of Hardwig Johansen.)

Q. And what did you do with the lever or telegraph?

A. I put it right there, just the same place.

Q. The same place, so as to signal that order back?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now what was the next signal you got?

A. Half speed ahead.

Q. Half speed ahead?

A. Yes, sir.

Q. What did you do with that one?

A. Put it over again.

Q. The same way?

A. The same way.

Q. And then what was the next signal you got?

A. Stop.

Q. What did you do with that signal?

A. I put it on stop.

Q. You put it on stop the same way?

A. Yes, sir.

Q. That is, the word "stop" on your box?

A. Yes, sir.

Q. You moved your lever to "stop"?

A. Yes, sir.

Q. What was the next signal you got?

A. Full speed astern.

Q. Full speed astern. What did you do with that?

(Testimony of Hardwig Johansen.)

A. I swung it to full speed astern.

Q. You swung your needle full speed astern, so that the needle pointed the same way on your box?

A. Yes, sir.

Q. And did you tell Tollefsen each time of those orders?

A. Yes, sir.

Mr. BRISTOL: Take the witness.

Mr. WOOD: I don't want to ask anything.

And further deponent saith not.

Signature waived.

Mr. WOOD: I would like to ask Captain Hansen another question, if he is out there.

Mr. BRISTOL: I don't know whether he is here. If he is here, you can get him. (After looking for Captain Hansen.) He is not here, Mr. Wood. He is down clearing ship at the Custom House. Now I don't suppose I will have to serve any formal notice, gentlemen; I would like to have the log of the "Thielbek." You know I spoke to you about that?

Mr. WOOD: Yes; you will have that.

Mr. BRISTOL: And I want to have the log of the "Ocklahama."

Mr. WOOD: You will have to serve Mr. Minor with that notice.

Mr. MINOR: Please write a note addressed to me, and also send a copy to Mr. Talbot.

Mr. BRISTOL: I would like also to have preserved the hawsers that were on the "Ocklahama."

Mr. MINOR: Make that in your note, will you?

Mr. BRISTOL: Yes, I will make that in my note. Thank you.

(Certificate of Notary Public omitted.)

Filed September 1, 1914. G. H. Marsh, Clerk.

Portland, Oregon, September 7, 1914, 2 p. m.

Mr. BRISTOL: The libelant, Wilhelmsen, offers this testimony with the consent of the Court and under the condition of the congested docket, out of order of proof, but in order that the pilots may get away—against that portion of The Port of Portland's defense which has to do with the allegation concerning defective steering gear and propeller.

MICHAEL MORAN, a witness called on behalf of Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Captain Moran, you are a regular Columbia River or Willamette and Columbia River pilot, are you not?

A. Yes, sir.

Q. Licensed as such?

A. Yes, sir.

Q. You are not working for The Port of Portland, are you, or in connection with it?

(Testimony of Michael Moran.)

A. No.

Q. You may state if you know the "Thode Fagelund."

A. Yes, I am acquainted with her.

Q. State whether or not you had any pilotage service to perform for her along about August 24, 1913, and if you did, state what it was.

A. Well, I boarded the "Thode Fagelund" at Astoria and piloted her up the river to Portland, or to St. Johns.

Q. Do you know, and state if you know whether it was before or after the collision?

A. It was after the collision.

Q. You may state, Captain, please whether or not the "Thode Fagelund" answered her helm upon that trip from Astoria to Portland.

A. She answered it. I didn't see any defects in her steering gear, how she answered. She handled well and steered well.

Q. How was it with reference to her propeller? Did you see or note anything when you gave orders for full speed ahead, quarter speed or any other old speed—did she do what you told her to do?

A. Yes, sir. I didn't see any difference.

Q. As I understand it, the service you performed was to bring her from Astoria, after the collision to Portland—or St. Johns.

A. Yes, sir, to St. Johns.

Q. State if you know, Captain Moran, any fact or circumstance upon that trip that would

(Testimony of Michael Moran.)

show or tend to show that the "Thode Fagelund" in any way was defective in her steering gear or her propeller?

A. Well, I couldn't—any defect whatever.

Mr. BRISTOL: That is all. You may cross-examine.

Mr. MINOR: No cross-examination but I move to strike out the testimony as immaterial and not responsive to the allegations of the answer.

Mr. WOOD: No questions.

Mr. SNOW: No questions.

Witness excused.

R. SANDSTROM, a witness called on behalf of Wilhelmsen, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. State your occupation, please.

A. Columbia River pilot.

Q. Do you work under The Port of Portland?

A. No, sir.

Q. Independent pilot on the Willamette and Columbia Rivers?

A. Yes, sir.

Q. State whether or not you had anything to do with the pilotage of the "Thode Fagelund"?

A. I piloted the "Thode Fagelund" from St. Johns to Astoria, when she was leaving for Puget Sound for repairs.

(Testimony of R. Sandstrom.)

Q. You may state whether or not during the voyage from St. Johns or wherever you took her, down to Astoria or the sea, wherever you released her, you noticed or observed anything defective in her steering gear or propeller, and if so state what it was.

A. No, I didn't see no defects in her handling. She is an exceptionally well handled boat.

Mr. SNOW: What is that, Captain?

A. Exceptionally well; good boat to handle.

Q. She answered her propeller with reference to the commands that you gave from your station as pilot, to her engine-room, did she?

A. Yes, sir.

Q. And also her helm?

A. Yes, sir.

Mr. BRISTOL: That is all; you may cross-examine.

Mr. MINOR: No questions, but I move to strike out the testimony of this witness as irrelevant and not responsive to the allegations of the answer.

Mr. WOOD: No questions.

Mr. SNOW: No questions.

Witness excused.

JULIUS ALLYN, a witness called on behalf of
Wilhelmsen, being first duly sworn, testified as
follows:

DIRECT EXAMINATION.

Questions by Mr. Bristol:

Q. Captain, your occupation?

A. Columbia and Willamette River pilot.

Q. Under the employ of The Port of Portland?

A. No, sir.

Q. State whether or not you had anything to
do with the ship "Thode Fagelund."

A. Yes, sir. I happened to go aboard the
"Thode Fagelund" at Astoria and brought her up
to Stella; from Stella to Portland, and from Port-
land to Stella and return. We anchored at Stella
to load piling. Then I also piloted her from Stella
to Astoria.

Q. To anchorage again?

A. To anchorage in Astoria.

Q. Then Mike Nolan succeeded you, or do you
know?

A. He came aboard just as I was leaving the
steamer in Astoria.

Q. This was all before the collision?

A. Yes, sir; that was the evening before. I
don't remember—

Q. August 23rd. The collision occurred August
24, 1913.

A. Yes. As near as I remember, I anchored at
Astoria at eleven o'clock in the evening—that same
night.

(Testimony of Julius Allyn.)

Q. Now, state whether or not, during the time that you had to do with the "Thode Fagelund," you noticed as a pilot anything erratic or defective in either her propeller or steering gear?

A. No, sir.

Q. In respect particularly to her being able to answer your commands the directions you wished to steer, and how propelled during all that voyage.

A. She was what I consider a very fine handling steamer, very fine steering steamer.

Q. Had there been anything defective either about her steering gear or propeller would you have noticed it or not?

A. Yes, sir, because on that particular night I took her down to Astoria on a very dark night, what is considered a very difficult feat, at half-tide—half-ebb-tide, and she steered down around those curves the very finest.

Q. Bends and hooks. You would consider the "Thode Fagelund," as you had her to handle the evening before the collision that occurred the following morning, then a boat that was efficient, both in steering gear and propeller?

A. Yes, sir.

Mr. BRISTOL: That is all. You may cross-examine.

Mr. MINOR: No questions to ask, but move to strike out the testimony of this witness as immaterial and not responsive to the allegations of the answer.

(Testimony of Julius Allyn.)

Mr. WOOD: No questions.

Mr. SNOW: No questions.

Witness excused.

Mr. BRISTOL: That is all I have to offer.

Adjourned until 10 o'clock tomorrow morning.

Tuesday, September 8, 1914, 2 P. M.

Mr. BRISTOL: For this afternoon I have preliminarily to offer to your Honor and counsel a series of photographs. I understand there will be no objection to these photographs, except in the nature, that is, in regard to the accuracy of their taking, the men who took them, and I don't know who called them, but that they would be objected to if offered as substantive evidence. I wish to say that the photographs I am about to offer as exhibits are for the purpose of delineating to the Court as exemplars of what happened in connection with the testimony of the witnesses, by deposition and by word of mouth, that may be produced, and not as substantive evidence of the proof of any fact. With that explanation, I will say to Mr. Minor, and to the rest of counsel, these pictures are offered. Perhaps I should assure Court and counsel these pictures were taken before any change had taken place in the two vessels, the "Thielbek" and the "Thode Fagelund."

Whereupon photographs Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, of the "Thode Fagelund" were received in evidence. No. 1 being photograph of

the port bow taken while she was at the dock. No. 2, top view of the bow of the "Thode Fagelund" looking forward on the ship from the deck at the time of the accident before any change had taken place. No. 3, photograph looking crosswise of the port bow of the "Thode Fagelund," that is to say, if one were looking from the starboard bow across, they would see the effect of the contact. No. 4, photo of the hole or space made in the body or hull of the "Thode Fagelund" looking directly forward. No. 5, photograph of the anchor chain, which will be referred to in the testimony as the anchor chain which was run out. No. 6, inside view of the bow of the "Thode Fagelund," from what is known as the oarlock, or below the between-deck sections, showing how the plates and beams were severed. No. 7, inside down view, looking forward and below from the deck, into the space occupied by the prow of the ship. No. 8, inside view of the hole made by the prow of the "Thielbek," showing part of the hawse pipe and shell of the same, as carried away. No. 9, inside view of the starboard section, showing a partial view of the anchor chain holding in the hole, made by the prow of the "Thielbek." No. 10, inside view taken looking forward with the anchor chain suspended in the hole referred to in view 4. The position of the camera in taking 10 was upon the lower between decks, in the fore peak of the "Thielbek" looking forward. No. 11, showing plates started on the port side, aft from the steamship.

Mr. BRISTOL: Now, a view of the ship "Thielbek" straight on.

Marked "Photo A."

Mr. BRISTOL: Starboard bow of the ship "Thielbek."

Marked "Photo B."

Mr. BRISTOL: Photograph of the port bow of the "Thielbek," showing the plates injured and removed as the result of the collision.

Marked "Photo C."

Mr. BRISTOL: A full stem view, at a closer distance, with the arc light, to illuminate the section of the hole punched in the "Thielbek's" bow by the anchor shaft at the time of the collision.

Marked "Photo D."

Mr. MINOR: For what purpose are these introduced?

Mr. BRISTOL: I tried to amplify it, Mr. Minor, but this is the idea: I don't offer these photographs as substantive evidence of any fact, but merely for the purpose of illustrating conditions the ships were in before any change had been made in them, as a consequence of their coming together.

Mr. MINOR: I object to each of them as incompetent, irrelevant and immaterial; there is no controversy between the parties in regard to that.

COURT: I suppose to be used by the witnesses.

Mr. BRISTOL: I offer, may it please the Court, the deposition and testimony of Captain M. B. Hansen; first mate J. A. Hansen; second mate Harold Rasmussen; first engineer B. Tol-

lefsen; third engineer Hartwick Johansen; and members of the crew of the "Thode Fagelund." This testimony was taken on the 12th day of September, 1913, by stipulation, before Mr. Alva W. Person, who makes the necessary certificate, and the witnesses being before all the respective proctors, and were examined and cross-examined.

Mr. Bristol reads deposition of Captain Hansen, of Bernard Meier, of Harold Rasmussen, of Bert Yegg, of Ole Olaffsen, of J. A. Hansen.

Whereupon proceedings were adjourned until 10 a. m. tomorrow morning.

Portland, Oregon, Wednesday, September 9, 1914,
10 A. M.

Mr. WOOD: I have already consulted Mr. Britsol. Captain Turppa of the "Ocklahama" is very anxious to get back to his boat, and counsel consents that we may put him on out of order now. He is really my witness, and I suppose Mr. Minor will want him too.

CAPTAIN I. TURPPA, a witness called on behalf of Knohr & Burchard, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Wood:

Q. Captain Turppa, you were the master of the "Ocklahama" at the time the "Thielbek" and the "Thode Fagelund" were in collision, were you not?

(Testimony of Captain I. Turppa.)

A. I was.

Q. Were you on deck in charge of the "Ocklahama" at the time you went down and took hold of the "Thielbek," the evening before the collision?

A. I was and made fast to the ship.

Q. You made fast to the ship?

A. I made fast to the ship "Thielbek."

Q. And where was the "Ocklahama" lashed to the "Thielbek"?

A. On the port quarter of the "Thielbek."

Q. And where was the "Thielbek" lying at anchor when you took hold of her the evening before the collision?

A. As near as I could tell it was about half way between the beacon down the bay with the red light on and the oil factory, the fish oil factory.

Q. About how many miles would that be below the point of collision?

A. Well, somewheres near three miles approximately; I am not positive.

Mr. BRISTOL: Fix that beacon with the lights on.

Q. What beacon is that?

A. I really don't know the name of it. It is down between Smith's Point and Flavel.

Q. Can you indicate it on the chart if shown you?

A. Yes, I can show you on the chart if you show me the chart.

(Testimony of Captain I. Turppa.)

Q. I show you Claimant's Exhibit 2, Captain, a chart of the Columbia River at that point.

A. Now, here is the beacon. (Indicating.)

Q. I don't want you to mark the beacon particularly. I want you to look at the beacon and the other points and mark the point where the "Thielbek" laid at anchor.

A. Here is the beacon and the "Thielbek" is somewheres about here. (Indicating.)

Q. Mark that with a pencil.

Mr. BRISTOL: There is the oil house there.

A. In about here. (Indicating.)

Mr. BRISTOL: Should be in there, in the middle of the channel or a little west of it?

A. A littel bit west of it.

Mr. BRISTOL: That is southwest.

A. Down that way. (Indicating.)

Mr. BRISTOL: Nearer the oil tank side?

A. I won't say that positive; probably on this side of the channel—not very far from the channel.

COURT: What—the beacon?

Mr. BRISTOL: No, your Honor; this is the post red light buoy, on the edge of Desdemona Sands and west of Beacon No. 14 in the channel, and the line about where the "Thielbek" was anchored was towards the starboard side of the channel, and on a line between the post red light and the oil tank.

A. Yes, somewheres about there.

Q. Now, Captain, take a pencil there and mark

(Testimony of Captain I. Turppa.)

a cross at the place where you think the "Thielbek" lay at anchor when you took hold of her.

A. This is the oil house here? (Indicating.)

Mr. BRISTOL: Yes, this is the oil house, and this is post red light here. (Indicating.)

A. Well, somewheres about here as near as I could say at the present time. (Indicating.)

Mr. BRISTOL: I will draw a line on the plat there. I will draw a line out from the cross and mark it "Anchorage fixed by Capt. Turppa of 'Thielbek' when lashed to 'Ocklahama.'" "

Q. As I understand it, Captain, you lashed to the "Thielbek" about 10:30 of the evening before the collision?

A. Yes, about that time. You see it is over a year ago now, and I wouldn't say positive without going to the records.

Q. And what time did you leave the anchorage to take the "Thielbek" up the river?

A. I left orders to start in and heave the anchor at 2:30 a. m.

Q. After you had lashed on to her at 10:30 in the evening, did you go to bed then?

A. I did very shortly after.

Q. And you told your pilot to start up the river at 2:30?

A. First I left word with the watchman to give the pilot that orders, and have the engineering department get the boat ready for that time, but I came down the cabin, and the pilot happened

(Testimony of Captain I. Turppa.)

to be on deck and I told him personally then that we start in and heave anchor at 2:30, and I was figuring on we would be ready to leave up then about 3:00 o'clock.

Q. From that time when you told the pilot to heave at 2:30, you know nothing more about the facts, as I understand it, until you heard the whistles just preceding the collision? During all that interval, as I understand it, you were in your bunk. Is that right?

A. Well, I was sleeping.

Q. Then we will come up to the time that you heard the whistles.

Mr. BRISTOL: He hasn't said he heard any whistles. I think you ought to ask him what the facts are; your statements of what he heard are not his testimony.

Mr. WOOD: I am simply hurrying it along.

Mr. BRISTOL: Let's stick to the facts and find out what he did do.

Q. Captain, what whistles did you hear, if any, prior to the collision?

A. I heard two whistles.

Q. From what boat?

A. I took it to be the "Thode Fagelund." She has been here several different times and I knew her whistles, and the night before, I came down that vessel and the "Thode Fagelund" overtook us and I have heard her whistle so many times I recognized her, although I was half asleep.

(Testimony of Captain I. Turppa.)

Q. Did you hear any other whistles?

A. Well, shortly after I heard two more whistles from the "Thode Fagelund."

Q. Did you hear those whistles answered or not?

A. The second two whistles I heard answered by the "Ocklahama."

Q. The first two whistles were not answered, at least you didn't hear it?

A. No, sir.

Q. What whistles, if any, did you hear after that?

A. Well, I heard the "Thode Fagelund" blow several whistles, what would be more of a distress signal than anything I could name.

Q. What did you do then?

A. I jumped out of bed.

Q. When you heard the distress whistles?

A. Yes, sir.

Q. Where was your bed?

A. In my room right aft the pilot house; what we call the texas.

Q. How close to the pilot house?

A. Probably fifteen feet from my bed up to the—right up to the pilot house, the wheel.

Q. The texas is next to the pilot house, is it?

A. Yes, sir; it is a room connected to the pilot house.

Q. And just aft of it?

A. Yes, sir.

(Testimony of Captain I. Turppa.)

Q. Did you have to go up any steps to get from the texas to the pilot house?

A. Few steps; I think is eight steps.

Q. When you jumped out of your bunk did you stop to dress or did you go out the way you were?

A. I won't say now positive whether—I didn't put on very much clothes if I did; I think I put on some.

Q. And when you went up into the pilot house—

Mr. BRISTOL: Now, he hasn't said anything about the pilot house; simply said he got up; said he got out when he heard those distress signals.

Mr. WOOD: I think he said—

Mr. BRISTOL: Let's find out where he went; he will tell.

Q. All right. Captain, where did you go from your bunk?

A. I went up to the pilot house.

Q. Who was in the pilot house when you got there?

A. Pilot Pease.

Q. Anybody else?

A. No, sir.

Q. Did you see the "Chinook" when you went up in the pilot house?

A. Yes, sir.

Q. Did you see the "Thode"?

A. I did.

Q. Had the collision taken place at that time?

(Testimony of Captain I. Turppa.)

A. Yes, sir. They had struck just about—just about the time that I was opening my door.

Q. Just about the time what?

A. Just about the time that I opened—commenced to open my door, I heard the crash.

Q. Well, how long did it take you from the time you opened the door until you got up in the pilot house where you could see them?

A. About a quarter of a minute.

Q. How far is it from your door up to the pilot house?

A. Just a few steps. I couldn't say just exactly.

Q. How far were the two bows of the "Thode Fagelund" and the "Thielbek" from the "Chinook" when you saw them?

A. Not over fifty feet; probably not that much.

Q. From the "Chinook"?

A. Yes, the "Chinook's" stern; very close to the "Chinook."

Q. About how close was the "Ocklahama" from the "Chinook"?

A. Well, it was probably a hundred feet as near as I could tell. It is pretty hard to tell the distance on the water. Distance is a little bit deceiving on the water, but it was very close.

Q. How far was it from the two bows of the "Thode Fagelund" and the "Thielbek" to the Astoria docks?

(Testimony of Captain I. Turppa.)

A. Oh, probably been from three to five hundred feet.

Q. And about how far from the "Ocklahama" to the Astoria docks?

A. Well, the "Ocklahama" was just on the port side of the ship, right alongside; couldn't have been over 40 feet, the difference; about the width of the ship; that is all.

Q. Can you describe, approximately the position that the "Chinook" was in with reference to the channel of the river?

Mr. BRISTOL: At what time, Mr. Wood?

Q. At this time that you saw them when you got in the pilot house.

Mr. BRISTOL: I understand at that time the ships were together. They had actually struck.

Mr. WOOD: Yes.

A. Yes, I can describe the position of the "Chinook" and all the rest of them, pretty close; I think I can.

Q. All right. That is what I want you to do. Well, first, about the "Chinook." How did she ride in the channel?

A. Almost across the stream, as near as I could tell. First turned towards Astoria, about turning around with the tide, laying across the stream.

Q. You say she was almost across the stream?

A. Well, practically so.

Q. Was her stern, if not pointing directly at

(Testimony of Captain I. Turppa.)

Astoria, was it a little bit upstream or downstream?

A. Oh, I couldn't say that. Astoria is five miles long. She would be pointing to some part of Astoria most anywhere.

Q. There has been some controversy here about what lights were on the "Thielbek" and the "Ocklahoma." What side lights? Do you know anything about that, or did somebody else attend to putting them out?

A. That evening when we made fast to the "Thielbek," our watchman passed up a spare screen we have, and side light that connected with the electric light, a wire attached to it from the boat. We passed that over, and the captain wanted to know what that was.

Q. Captain of who?

A. Captain of the "Thielbek." I explained it to him that that was a side light, green light that we were going to give him when we started out, and he wasn't to put out any lights whatever when we got started; that we would attend to all the lights. All they had to do is to heave the anchor up, and we will do the rest of it; and he started in to tell his mates. Of course he talked German. I couldn't understand what he said about the lights, in regard to these lights, but our watchman, he speaks German, and he understood what he said to them, and then after the collision, I went aboard the "Thielbek" as soon as we got alongside, when

(Testimony of Captain I. Turppa.)

we was making fast, I went over there to see; you see the two vessels was stuck together. I went over to see whether it was safe for us to pull the "Thielbek" away from the "Thode Fagelund," or whether I better leave them together that way until something was done, so I went over there, and on the forecastle-head of the "Thielbek," and I stepped over on the "Thode Fagelund," and all the lights I saw in that neighborhood was the side lights of the "Thode Fagelund," but I didn't see no lights on the ship at all.

Q. Your lights on the "Ocklahoma," I understand you to say were electric lights?

A. Yes, sir.

Q. You said, didn't you, just now, that the "Thielbek" was entirely in charge of the "Ocklahoma"? You told them all they had to do was to heave the anchor, and you would do the rest?

A. Yes. We told them we would attend to their lights.

Q. And their navigation?

A. Well, we usually do that, but we always order one of their sailors to the helm in case we need their wheel, or their rudder. They are there to assist.

Q. But they were to conform to your orders? That is what I mean.

A. Oh, yes, they do that; they don't know the river. We have to do that.

Mr. WOOD: That is all.

(Testimony of Captain I. Turppa.)

Further direct examination by Mr. Minor on behalf of The Port of Portland.

Mr. MINOR: I would like to ask some questions Mr. Wood didn't ask, and the witness is mine as far as these questions are concerned.

Q. You knew about the lights being put aboard the "Thielbek," after the collision?

A. Do I know what?

Q. About the lights being put on the "Thielbek" after the collision?

A. After the collision?

Q. Yes.

A. Well, when the collision occurred, our lines carried away, and also the electric wire that was run from the "Ocklahama" connected to this side light that we put aboard the "Thielbek." It had carried away, and the end of it dropped in the water, creating a short circuit on our cabin lights; so after we made fast the second time, we told—myself, if I remember right, and Captain Pease perhaps also told them that they had to put out their green lights because our light was burned out on that circuit; that we couldn't give them our light this time; and for some cause or other, they have misunderstood our orders and put out both lights, red and green lights, which we discovered about fifteen minutes after that. We was out in the stream, and there were people from Astoria, a Captain Anderson and some other man came aboard

(Testimony of Captain I. Turppa.)

with him, and they came aboard the "Ocklahama," and they told us that we had two red lights.

COURT: Two red lights?

A. Two red lights. This was after the collision. Then we sent our watchman aboard the ship there, and he also discovered that ship had a red and green light out, instead of having the green light only, the green side light only.

Q. What kind of lights did the "Thielbek" use?

A. The "Thielbek," it had red and green lights after the collision, but before the collision, it had no light out.

Q. The only light she had out before the collision, as I understand, was yours?

A. She didn't suppose to have. I was in bed. I didn't go to see it myself.

Q. I want to know what kind of lights they use, whether electric lights or other lights?

A. Well, I am sure she had electric lights before the collision.

Q. Yes. But I mean after the collision. The lights which she put out, what kind were they?

A. They put out oil lamps.

Q. Oil lamps. That is what I want to get at. Now, Captain, how long have you been a master?

A. Master on the "Ocklahama"?

Q. On any boat now?

A. Well, I been master at different times on boats, but I been on the "Ocklahama" since April. A year ago last April, 1913.

(Testimony of Captain I. Turppa.)

Q. What boats were you on before that?

A. Well, I been on some Willamette River boats, the Leona; was master of the Lurline one time.

Q. How long have you held a master's license?

A. I think it is 1904.

Q. 1904?

A. I think that was the year. I am pretty sure it was. I was master of the Leona at that time, on the Oregon City run.

Q. Prior to that time, what position did you have on the boats?

A. I was mate a good deal of the time.

Q. Mate a good deal of the time?

A. Yes.

Q. How long was you mate?

A. I been mate a good many years.

Q. How long have you been engaged in navigating boats on the river?

A. I think I got my mate's license in 1897, I think it was.

Q. 1897?

A. I think that was the year.

Q. During that time, have you been in pretty constant employment on the river?

A. Yes, sir.

Q. Captain, you say you heard two whistles from the "Thode Fagelund," and didn't hear them answered?

(Testimony of Captain I. Turppa.)

A. I heard two whistles, yes, sir, and heard no answer.

Q. Now, did it strike you as anything peculiar that you didn't hear them answered?

A. No, not necessary. A good many times I knew that there was a vessel in there, and perhaps I knew the "Thode Fagelund's" position the night before, where she was anchored at Astoria, and also knew the "Chinook's" position, and many a time, now, when we have a tow, we won't answer the whistle until we know that we are going to be able to handle the tow that way; we hesitate a little bit until we know that we got—

Q. Can you approximate the time between the two whistles you first heard from the "Thode Fagelund," and the second two whistles you heard from the "Thode Fagelund"?

A. No, not whatever.

Q. Were they close together or not?

A. Wasn't very far apart, but I wouldn't say what time it was. I won't state no time, because I was half asleep, although I was awake enough, I heard the whistles, and I heard the bells that were given on the "Ocklahama."

Q. You heard the bells?

A. I heard the bells, yes, sir.

Q. I wish you would tell the Court what bells you heard from the "Ocklahama."

A. First I heard the bells slowing down the steam.

(Testimony of Captain I. Turppa.)

Q. At what time, with reference to when you heard the first whistle?

Mr. BRISTOL: The first whistle you mean on what, Mr. Minor?

Q. The "Thode Fagelund," the first whistle you heard?

A. I think—I won't say positive, but I rather think it was right after that the "Thode Fagelund" had blown one whistle. I won't say positive the time, but—

Q. That is your best recollection, is it?

A. Yes, sir.

Q. Now, what other bells did you hear from the "Ocklahama"?

A. After while I heard a bell to stop, and shortly after, I heard the bell backing full speed.

Q. Now, can you tell at what time you heard the bell to stop, as related to the whistles which you heard from the "Thode Fagelund"?

A. No, I won't state the time.

Q. You don't know the time?

A. No.

Q. Can you tell at what time you heard the bell to back, relating to the time you heard the whistle of the "Thode Fagelund"?

A. Well, I couldn't say how long it was, after the "Thode Fagelund" had blown her second whistle, and we had answered her second whistle. I won't say. I won't state no length of time.

Q. Did you drop asleep at all after you heard

(Testimony of Captain I. Turppa.)

the whistle from the "Ocklahama" up to the time of the collision?

A. Well, I was half asleep; half asleep and half awake at all the time, but I wouldn't—many a time when I meet the vessels on the river, we slow down, and sometimes we stop. Now, the swells of some boats, it makes it necessary for us to do this, in order to stop our lines carrying away, and I don't think nothing more about it than just something of that kind. He just slowed down the speed, probably he was afraid of a swell.

Q. Captain, what is the power of the "Ocklahama"? I mean, what is the—

A. Oh, I think they estimate it somewhere near seven hundred horsepower, but I am not an engineer, never had—

Q. What experience have you had in towing vessels like the "Thielbek"?

A. Oh, I have towed several vessels as large as this; towed her down.

Q. I will ask you whether she had sufficient power to tow vessels of that kind?

A. Yes, she towed the "Thielbek" first rate.

Q. How does she steer—the "Ocklahama"?

A. The "Ocklahama" steers very good, as a rule.

Q. What is the fact as to there being any difficulty at any time on the "Ocklahama," in steering a tow like the "Thielbek"?

A. Well, now, once in awhile, you know, if a vessel gets to swinging a big vessel like the "Thiel-

(Testimony of Captain I. Turppa.)

bek," or some of the others, it takes quite a bit of power opposite to stop the swing.

Q. Generally speaking.

Q. As a general rule, she steers very good.

Q. What was the condition of the "Ocklahama" that night? You had been running her that night?

A. I didn't see anything wrong with her.

Q. Was she in good condition, in your judgment?

A. Yes, in my judgment, as good as any time.

Q. How large a crew did you have on the boat?

A. We have thirteen men, the whole crew.

Q. Thirteen men?

A. Yes, sir.

Q. Tell the Court what the position of these men is on the boat; I mean by that what their office is.

A. One master, one pilot, one mate, one watchman, the chief engineer, second engineer, two firemen, three sailors, steward and a cook.

Q. Now, what was the condition of the tow lines of the "Ocklahama" that night?

A. We had a wire tow line, inch wire.

Q. How many lines was the "Thielbek" lashed to the "Ocklahama" with?

A. We had two stern lines, two breast lines, one tow line and one head line.

Q. Tell the Court about what were the sizes and nature or material of these lines?

A. Our manila lines are seven inch lines. Head

(Testimony of Captain I. Turppa.)

line, breast lines and stern lines, and then they have a wire pennant on the end of each one of them, probably it was five or six fathoms of wire. I think it is three-quarters, either five-eighths or three-quarter wires; wire pennants on the end of each one of them.

Q. And your tow line is how large?

A. Our tow line is an inch wire.

Q. Inch wire?

A. Yes, sir.

Q. These manila lines, as I understand, you measure by circumference, seven inches being seven inches in circumference?

A. Yes, sir.

Q. Were your lines parted?

A. Yes, the lines were parted. When I went out to the pilot house, the head line was still intact.

Q. The head line was intact, and the others were parted?

A. Yes.

Q. And at what place on the lines were they parted? Do you remember?

A. Different places; some very close to that wire pennant, and some further away. I couldn't positively state now.

Q. What was the condition of those lines as to being strong and sound at that time?

A. Well, some of them were pretty well worn. Some—we didn't—

(Testimony of Captain I. Turppa.)

Q. Did you bring the "Thielbek" up to Portland after that collision?

A. Yes, sir.

Q. What lines did you use for that purpose?

A. Lines just the same size.

Q. The same lines, did you?

A. No. Not the same lines, but the same size.

Q. Demand has been made upon me, Captain, to produce those lines that you had on the "Ocklahama" that night. Do you know what became of them?

A. Up in the commissary at the Ash Street dock now, I think. I saw them a week or so ago.

Q. Did you observe how the helm was on the "Ocklahama" when you came on deck?

A. No, sir.

Q. What was she doing at that time? Was she standing still, or backing, or what was she doing?

A. She was working, and I am quite positive she was working back, because when that head line carried away, she went down-stream a little, back, so I am satisfied she was working back.

Q. But you didn't notice her helm?

A. No, no, sir.

Q. What speed does the "Ocklahama" make in towing a vessel like the "Thielbek" up the river, say, or down the river?

A. You mean at that time or—

Q. What is her ordinary speed going up or going down the river?

(Testimony of Captain I. Turppa.)

A. Well, that is pretty hard to say. That is all owing to the tides and current.

Q. Well, her maximum, and minimum speed, we will say.

A. Well, somewhere in the neighborhood, probably of seven miles. I don't think any more, and probably a little less.

Q. And she can tow a vessel like the "Thielbek" in ordinary water at the rate of seven miles an hour?

A. Yes, perhaps eight, with good flood tide.

Mr. BRISTOL: This was flood tide, wasn't it?

A. Yes, a very small tide.

Q. Flood tide, but a very small tide?

A. Yes, hadn't much more—the flood was just about turned. That is about all; just turning.

Q. Now, Captain, suppose that you had been at the helm of the "Oklahoma" the evening of the collision, and had heard these two signals from the "Thode Fagelund," and supposing the "Chinook" was between you and the "Thode Fagelund" at that time, what, in your judgment, would have been a proper thing for you to do under the circumstances, as far as answering the "Thode Fagelund."

Mr. MINOR: This is an expert witness, your honor.

Mr. BRISTOL: Now, so your honor gets the point of this, that question is objected to for the reason that it contains an element not yet in evidence. There is no testimony here that the "Chi-

(Testimony of Captain I. Turppa.)

nook," as far as the people on the "Ocklahama" and "Thielbek" was concerned, was between them and the "Thode Fagelund."

Mr. MINOR: The evidence will be in, your honor.

Mr. SNOW: At the time of the first whistle of the "Thode Fagelund."

Mr. BRISTOL: I say at the time of the first whistles, there is no such evidence, yet.

Mr. MINOR: There will be such evidence. This witness was put on out of order.

Mr. BRISTOL: Well, I want my record right.

COURT: Go ahead.

A. If I don't see a vessel, what her position is, I don't answer her whistles.

Q. Wouldn't answer her whistles?

A. No, if I don't see her position, don't know her position.

Q. If at that time, from what you could see of the vessel, you could see only her green light, and her range lights, and she was beyond the "Chinook" from you, but was coming around the "Chinook," what, in your judgment, would have been good seamanship on your part? What would you have done under those circumstances?

Mr. BRISTOL: That is, if she blew; if the "Thode Fagelund" then blew two whistles.

Q. Yes, just the first whistle.

A. Well, if I seen her green light, I would naturally think that two whistles was all right.

(Testimony of Captain I. Turppa.)

Q. If you couldn't see the vessel except that you could see her green lights over the "Chinook," understand?

A. And you said I could see her range lights?

Q. You could see her range lights over the "Chinook," but couldn't see the vessel at all, and she was coming out from behind the "Chinook"?

A. It would depend a little bit on what position I see those range lights. Now, her red light being out, and I only be able to see her green light, and at the same time the range light might indicate that she be heading over toward her right, but her red light might be out for all I know, and still I be able to see her green light; not being so far over that the green will be in view.

Q. Now, under those circumstances, we say the hull of the ship concealed by the "Chinook," the range lights in view, and the green light in view, and the ship coming out from behind the "Chinook," and she gives two whistles?

A. Yes.

Q. Now, what, in your judgment, should have been done by the pilot on board the "Ocklahama," if anything? I mean, should he have answered the whistle, or not?

A. I think if he only sees her green light, and he was satisfied that he won't have to cross her bow anyway, I think it was safe enough to give the two whistles.

(Testimony of Captain I. Turppa.)

Mr. BRISTOL: You say you think he was safe to give the two whistles?

A. Yes, if he saw her green lights; green light and her range lights in position that he wouldn't have to cross her bow.

Q. Suppose it was in such a position he couldn't tell with accuracy the position of the "Thode Fagelund." What should he have done in that case?

Mr. BRISTOL: Of course, your Honor understands, my objection goes to this until it is connected up.

A. I do think that if she wanted that side, and he saw any green light, I think I would have been perfectly willing to give her that side, because I expect the vessel that is approaching me will do something to avoid a collision.

Q. But what I mean, Captain, if you were in doubt as to her position, because of the manner in which the range lights appeared to you, and the fact that she was beyond the "Chinook" from you, what, in your judgment, would you have done?

A. I don't know as I have any reasons to be in doubt if I see her green light, and she blows me two whistles. I don't see any reason why I should be in doubt to blow her two whistles.

Q. Now, I understood you to say awhile ago, though, that you wouldn't consider it anything out of the way or bad seamanship, not to answer the first whistle.

A. No. No, if I only see her green lights.

(Testimony of Captain I. Turppa.)

Q. What maneuvers would you give to your boat under those circumstances?

Mr. BRISTOL: What circumstances, now, are you referring to, Mr. Minor?

Mr. MINOR: I have just detailed them; that he sees the "Thode Fagelund" beyond the "Chinook," and sees her green light and her range lights, and she gives two whistles.

Mr. BRISTOL: All right. I wanted it determined. "Those circumstances" is not very definite.

A. Under the circumstances, so far I don't see anything out of the way.

Q. Anything for you to do?

A. Nothing any more than to answer her whistles when I see the vessel's position and proceed ahead.

Q. I mean, would you change your course at all?

A. Which way?

Q. Either way. Would you change your course at all?

A. I would try to keep on the starboard side of the approaching vessel, that is all.

Q. Now, when she gave the second whistle, and that was answered—

A. Yes, sir.

Q. By the "Ocklahama," and then blew a danger signal, or distress signal, as you term it—

A. Yes, sir.

Q. What would you have done under those cir-

(Testimony of Captain I. Turppa.)

cumstances, as far as your helm was concerned, and as far as the course of your boat was concerned?

A. I don't know. I might have thought that he had lost a pilot wheel, or propellor off the boat; he was in distress, and couldn't do something for himself, or something. I don't know what I would think.

Q. You wouldn't have made out that as a danger signal and indicating—

A. (Interrupting) And I am satisfied the vessels were so close to one another at that time, it wouldn't make much difference what I thought; I wouldn't be able to do much of anything—done anything more than stop and back, which was done.

Q. Stop and back—that is what I want to get at.

A. I would stop and back.

Q. Now, Captain, as I understand, the tide was just beginning to flood?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. You know the "Thielbek," and you know the "Ocklahama." In what space can the "Ocklahama," going full speed astern, stop the "Thielbek," if the "Thielbek" and the "Ocklahama," at the time when you undertook to back, were proceeding at a speed of about six miles an hour?

Mr. BRISTOL: As to that I object, because there is no evidence that the "Thielbek" and the

(Testimony of Captain I. Turppa.)

"Ocklahama" were then, or at any time, proceeding at six miles an hour.

Mr. MINOR: That is an allegation of the libel, your Honor, and I have to meet everything in the libel. The libel of Mr. Snow says that.

Q. In what distance could they stop?

A. Well, I couldn't say how many feet, or how many—but I know that I tried her here in the Portland harbor, and it took me five minutes to stop from full speed astern.

Q. Five minutes to stop. Now, suppose they were only going two miles an hour; at what time could she stop her then?

A. It would depend on how the current is.

Q. Well, the current, as you say, was just beginning to flood down there?

A. If I was going that slow, why, she would be nearly stopped.

Q. Nearly stopped?

A. Yes.

Q. And how long would it take, in your judgment, and what distance, in your judgment, would it take to stop her entirely?

A. Oh, I couldn't say that, because I never tried.

COURT: What was that, Captain?

A. I couldn't positively state how long it would take.

Q. Captain, you have testified as to the position that the "Chinook" bore to the bows of the two ves-

(Testimony of Captain I. Turppa.)

sels, at the time you came in the pilot house, and also to the position of the "Ocklahama." Now, I ask you to state—

Mr. BRISTOL: (Interrupting) Now, I don't want to annoy you and don't want to make objections—

Mr. MINOR: Let me get through my question.

Mr. BRISTOL: He gave distances; he didn't give positions. He gave distance.

COURT: Didn't he say just off from the stern?

Mr. BRISTOL: He said fifty feet. He gave distance, not position.

Mr. MINOR: Well, use Mr. Bristol's word, if he wants to be technical.

Mr. BRISTOL: Well, it is technical enough to represent a whole lot of interests in this case.

COURT: Go ahead.

Q. Now, Captain, I want you to tell the Court whether, in your judgment, it would have been safe for the "Ocklahama," with her tow, to have gone further to her port in making the passing at that time and place?

Mr. BRISTOL: I object to that, for this reason: That Mr. Minor's question, in view of his making this witness his witness, should include the conditions that as far as we know are now in evidence. He predicates this question, may it please your Honor, so you may understand my objection, upon the Captain's estimate that fifty feet was between these people when he got in the pilot house, but

(Testimony of Captain I. Turppa.)

without informing the witness of what the record is; your Honor knows that there is ample evidence now in the record showing that the distance between those ships at that particular time was much different. Now, if the questions involved the distances variously that we have in the record, I don't object to it, but I do object to this question to this man as an expert, when he is not fully advised of the fact.

Mr. MINOR: I am asking the question. The witness knows what he saw. He has already shown that he knows what he saw. Taking everything that he saw, as he saw it then, the distance of these bows, and of the "Ocklahama" from the "Chinook," the position of the "Chinook," I want to know of this witness, whether in his judgment the "Ocklahama" and her tow could have safely passed, could have safely gone further to port in order to make a passage of the "Thode Fagelund."

A. I am in doubt very much whether we could have gone any further to our port without colliding with the "Chinook's" stern.

Q. That is what I want to get at.

A. I do think that the "Ocklahama" at any time that I seen her, she was so—seemed to be so near in line, or was so close to the "Chinook" that I am very doubtful whether we could have gone by there without colliding with her.

Mr. MINOR: I wasn't anticipating this witness

(Testimony of Captain I. Turppa.)

being called this morning, so I haven't his report in hand. I will get it in a moment.

Mr. BRISTOL: While Mr. Minor is looking for that paper, to make my objection clear, I would like to ask the witness, without conducting my cross examination, a question. You base that opinion you couldn't get by without colliding on what you saw when the ships were together, when you were in the pilot house?

A. Yes, sir.

Mr. BRISTOL: At that time?

A. Yes, sir.

CROSS EXAMINATION.

Questions by Mr. Snow:

Q. Captain, you were half asleep and half awake from the time you heard the first whistles of the "Ocklahama" up to the time of the collision?

A. Probably up to the time I heard those trouble distress whistles of the "Thode Fagelund."

Q. At the time you heard what you call the distress signals, and what we call the danger signals, Captain—that is what you mean by distress signals, the danger signals?

A. Yes, sir.

Q. Repeated short blasts of the whistle?

A. Yes, sir.

Q. You were half asleep from the time you heard the first whistle of the "Fagelund" up to the time you heard the danger signals?

A. I was awake enough all the time I knew we

(Testimony of Captain I. Turppa.)

were meeting the "Thode," and I knew—when I was at the dock the night before, I heard something about the pilot going aboard the "Thode Fagelund," and I just thought, now the "Thode Fagelund" is going to sea, when I heard the whistles.

Q. When you got down the night before, you knew that the "Fagelund" was going to sea the next morning?

A. I heard it at the Astoria dock, when I was there telephoning for my orders.

Q. Now, are you able to state the time between the first two whistles of the "Thode Fagelund," and the second two whistles?

A. I am not. I wouldn't state no time.

Q. Whether a minute or half a minute, you can't tell?

A. No. I wouldn't state no time at all.

Q. The first whistles of the "Fagelund" were not answered?

A. No.

Q. And the second whistles of the "Fagelund," where he gave the two whistles, the second signal—

A. Were answered.

Q. Were answered?

A. Yes.

Q. Now, at the time of those first whistles—you don't know at what speed, by the way, the "Ocklahoma" was going at that time, of course?

A. No, because I wasn't there to see it.

Q. If you don't know, I don't want you to state.

(Testimony of Captain I. Turppa.)

A. No.

Q. No good of our guessing. You don't know what speed she was running at that time.

A. Usually takes us from twenty minutes to half an hour to go from this anchorage abreast of Astoria, and I generally take notice of the time, and some times kind of forecast it, about how long it is going to take us when we go from this anchorage to Astoria; that is, if the weather permits.

Q. I don't understand it quite.

A. Average time.

Q. You don't know what speed she was going at the time those whistles were blowing?

A. No, no; I don't know.

Q. If, when the first whistles were blown, Captain, from the "Fagelund," the "Fagelund" could see your red light?

A. Yes.

Q. And you could see the "Fagelund's" green light?

A. Yes.

Q. And if the range lights on the "Fagelund" were open, then you would make to port, and leave her to your starboard side?

A. What do you mean? Port my helm, or what?

Q. That you would make off to your left?

A. Yes.

Q. Which would be, of course, your port side. That was a proper signal, then, to have given. You say that to a vessel, for instance, when you could

(Testimony of Captain I. Turppa.)

see her green light, and you couldn't see her red light; your position was such you could see the range lights of the "Thode Fagelund" were open?

A. Yes.

Q. You would make over to the port, wouldn't you?

A. Yes, would try to keep clear of her, would try to keep the left side of her.

Q. You would be willing to give a vessel which had signaled for that passing—you would think a proper signal, wouldn't you?

A. I would, if I saw a light in such a position, I can determine her position from my own.

Q. Now, you can determine something of her course—you can't give her exact course, but you can determine something of her course from her range lights, can't you?

A. Yes, can usually.

Q. Now, if her range lights were open, and you could see her green light, you presume, of course, both lights are burning?

A. Yes, if I see the lights, so I can determine her position, I would answer her whistles, but if I didn't—if I am not sure of her position, I don't want to blow whistles.

Q. Now, in the position I have given you, you are sure of her position, aren't you?

A. If I am?

Q. Let's suppose that you are the pilot on the "Ocklahoma"?

(Testimony of Captain I. Turppa.)

A. Yes, sir.

Q. And you were running on such a course as that you could see the "Fagelund's" green light, and the "Fagelund" could see your red light.

A. I don't know what the "Thode Fagelund" could see if I am pilot—

Q. (Interrupting) I say, assuming that the "Fagelund" could see your red light, and you could see the range lights of the "Fagelund" were open; that means, of course, you are going in a certain direction up the river, whereby your red light is visible, and he is coming down the river in a certain direction, whereby his green light is visible, and you can see the range lights of the "Fagelund" open.

A. Yes.

Q. You would immediately answer that whistle, wouldn't you?

A. Provided I am sure of her position. If I see her lights in such position that I am sure of her position, and I deem it safe, then I will answer it.

Q. Now, you describe the position of the vessel that is coming down the stream so you can see her green light. Now, you describe the position—

A. Yes, if I see her green light, I will blow her two whistles.

Q. And her range lights open.

A. And her range lights.

Q. And she blows two whistles?

A. Yes.

(Testimony of Captain I. Turppa.)

Q. You would immediately answer her, wouldn't you?

A. I would answer her if I see her lights, in such position that I know which way she is going.

Q. Now, do you know how long after the second two whistles, the two whistles that the "Fagelund" gave, how long a time had elapsed, before you heard what you call the distress signals?

A. I won't state the time.

Q. Whether it was half a minute or a minute, you don't know that?

A. No, sir; I don't.

Q. Now, it is not uncommon for you to hear those whistles going up and down the river, is it?

A. Nothing at all.

Q. A whistle doesn't attract your attention?

A. No, not particularly. I don't jump out of bed for every whistle I hear.

Q. If a danger signal is blown, then it does attract your attention?

A. Yes. Then I would think something wrong.

Q. Now, the first whistle you heard that gave you any idea that there might be any possible trouble was the danger signal from the "Fagelund"?

A. Yes, sir, and I heard her anchor go down, anchor chains running out the pipe.

Q. You did hear that?

A. Yes, sir, I heard that.

Q. That was before you got out of your bunk, was it?

(Testimony of Captain I. Turppa.)

A. That was just about the same time, because I wasn't very long getting out of the bunk.

Q. How many danger signals did you hear?

A. Oh, there was too many to count. I couldn't tell how many. Several of them.

Q. Did you blow any danger signals—the "Ocklahama," I mean?

A. Did I know?

Q. Did your "Ocklahama" blow any danger signals?

A. No.

Q. Did the "Ocklahama" blow any danger signals herself?

A. No, sir.

Q. Now, then, you heard the anchor chains of the "Fagelund" go out?

A. Yes.

Q. After you had heard the danger signals of the "Fagelund"?

A. Oh, they was about the same time. There was no—nearly everything was so close together, as far as I can tell.

Q. No appreciable difference in time as between the danger signals and the anchor chains going out?

A. No.

Q. Now, what whistle did you hear on the "Ocklahama"?

A. What whistles?

Q. Yes, as from the time—

A. (Interrupting) Only two whistles.

(Testimony of Captain I. Turppa.)

Q. From the time you heard the two whistles blown?

A. Yes, sir.

Q. The "Ocklahama" answered the second whistle of the "Fagelund"?

A. Yes, sir.

Q. What other whistles did you hear of the "Ocklahama" that night?

A. I didn't hear no other whistles, that is in connection with the collision.

Q. You didn't hear any whistles at all?

A. Not any other in connection with the collision.

Q. You heard, you say, some signal bells to the engine?

A. Yes, sir.

Q. Is that a system of bell signals?

A. Yes, sir.

Q. Or a telegraph system?

A. By bells.

Q. By bells. How long after the "Ocklahama" had blown her two whistles did you hear her bell signal?

A. I won't state time, no.

Mr. WOOD: Mr. Snow, it is all right for you to make this man your own witness on that, but I didn't ask a thing about it.

Mr. BRISTOL: Mr. Minor did. We have the two of you in this case.

COURT: We want the facts, anyway.

(Testimony of Captain I. Turppa.)

Mr. BRISTOL: Yes, that is what we are after.

Q. After you heard the two whistles of the "Ocklahama," answering the "Fagelund," you don't know what time elapsed, before you heard the signal bells to the engineer?

A. No, sir.

Q. What were the first signal bells you heard to the engineer, from the "Ocklahama"?

A. What were they?

Q. Yes, what were the first bells you heard?

A. It was slow down.

Q. Slow down?

A. Yes, sir.

Q. Did that mean, or indicate, the character of the speed of the vessel? I mean, was it half speed, or what?

A. Well, slow down. The engines of the "Ocklahama" work either half speed or quarter speed.

Q. Now, did you hear half speed or quarter speed bell?

A. Well, I won't say that. This bell is jingles.

Q. All you know is you heard some bell that indicated a direction to slow down his speed?

A. Slow down.

Mr. BRISTOL: What he means is, the first bell he heard is the jingle bell. He heard the jingle bell first.

A. Yes, the jingle bell.

Q. What is the jingle bell for?

(Testimony of Captain I. Turppa.)

A. For to slow down principally; that is, in that case.

Q. What?

A. In case when we go on full speed either head or back, that means slow down.

Q. You were going ahead, and don't know what speed?

A. Yes, sir.

Q. First you heard the jingle bell, and that means slow down?

A. Yes, sir.

Q. What is the next bell you heard?

A. Stop.

Q. How long between the jingle bell and the stop bell you heard?

A. I won't state no time.

Q. What?

A. I won't state a time. I wouldn't know how long it was, whether it was a minute, or whether it was two minutes.

Q. Now, at the time of those bells, did you hear the—

A. (Interrupting) I won't state no time. I wasn't looking at the clock or watch.

Q. You were half asleep at that time, as I understand, Captain?

A. Yes, sir.

Q. You heard them mechanically, as any man hears them on his vessels. He hears the bells, and doesn't pay any attention to the bells not of a seri-

(Testimony of Captain I. Turppa.)

ous nature, and you only know you heard some bells indicating a slow speed?

A. I heard the bells, yes.

Q. Now, if she were going at seven miles an hour at the time you heard this call for slow speed, how long would it take her after a bell to stop, to stop the momentum of the vessel, of the "Thielbek"?

A. Stop her headway entirely?

Q. Yes.

A. Oh, about five minutes, approximately.

Q. About five minutes?

A. Yes, about.

Q. You think in about five minutes, if she were going at seven miles an hour, you could stop the vessel, could you?

A. I believe I could her. I tried it here in the Portland harbor, just to see how long it would take. It took me five minutes to stop.

COURT: At what speed?

A. We were going at full speed.

Mr. BRISTOL: You were going hooked up the same way you were going this night?

A. Yes, sir.

Q. Did you have a tow with you when you tried to stop her?

A. I had the "Thielbek."

Mr. BRISTOL: Yes, tried to stop her in the Portland harbor, he said.

COURT: You had a tow.

(Testimony of Captain I. Turppa.)

Mr. BRISTOL: This same ship, the "Thielbek," he told you.

COURT: This same boat in the harbor.

Mr. SNOW: Oh, I see. And were going at full speed, and stopped her in five minutes?

A. Yes.

Q. Now, when you came out to the pilot house, in your half-dressed condition, the collision had taken place, had it?

A. The collision—the blow struck.

Q. The collision resulted in the parting of all your lines except your head line?

A. Head line. That held yet.

Q. Now, at that time you say that you, the "Ocklahama" and the "Thielbek," and the "Fagelund," were about fifty feet from the stern of the "Chinook"?

A. It looks to me like that the bows of the two vessels was about fifty feet astern of her, right astern of the "Chinook," and the "Ocklahama" was about 100 feet downstream from her, and in almost—just about in line of the "Chinook's" stern.

Q. Did you say the "Ocklahama" was 100 feet below?

A. A hundred feet down the stream.

Q. Below the "Thielbek"?

A. No, sir; below the "Chinook." It was lying right along very close alongside the "Thielbek." Our head line was still held, but we wasn't away from the "Thielbek" very far.

(Testimony of Captain I. Turppa.)

Q. Did you ever part that head line of the "Thielbek" and the "Ocklahama" at all? Was it ever parted at any time?

A. Yes, that carried away, too.

Q. That carried away, too?

A. Yes.

Q. That carried away after you got on deck, after you got in the pilot house?

A. Yes, sir, that carried away.

Q. Now, didn't the "Ocklahama" shoot a little ahead of the "Thielbek" upstream?

A. Didn't what?

Q. Shoot ahead of the "Thielbek"; when the "Thielbek" and the "Fagelund" came together, didn't the "Ocklahama" go on upstream a little bit?

A. Not to my knowledge. When I came to the pilot house, the head line still held, and that was taut?

Q. That was taut?

A. Taut, yes, sir, and carried away directly after I got there.

Mr. BRISTOL: He was backing at that time, you know.

Q. Now, you say the manila lines with which the "Thielbek" was fastened to the "Ocklahama" are seven inches in diameter, approximately?

Mr. BRISTOL: No, no.

A. Circumference.

Mr. BRISTOL: Seven-inch line.

(Testimony of Captain I. Turppa.)

A. Circumference, yes, sir; that is the way manila lines are measured.

Q. And no part of the steel part of the line parted. It was the manila?

A. If I remember right, that tow line is the only steel line that carried away, steel wire that carried away, just the tow line, but there might have been some of the breast lines too, for all I could tell you at the present time.

Q. And you say those lines are now in the commissary at the Ash Street Dock?

A. Yes; they were there a couple of weeks ago.

Mr. MINOR: They will be here, Mr. Snow. Those lines will be furnished.

CROSS EXAMINATION ON BEHALF OF WILHELMSEN.

Questions by Mr. Bristol:

Q. The probabilities are, Captain, when you came in the wheel house, and saw the head line there, the "Ocklahama" was still backing against that head line, wasn't she?

A. Yes.

Q. In other words, when the impact came, and she was still backing, it carried her lines all loose, and she held the head line, and that pulled her off downstream.

A. The head line still held.

Q. If you don't mind, Captain, we have a few little blocks of wood here, and I would like to show you so you and I can get it illustrated here, and

(Testimony of Captain I. Turppa.)

maybe all these gentlemen can understand it, as to just what this situation was when you came into the pilot house.

A. All right, sir.

Q. I want to show you, if you will just sit there, and if you will hold this blotter.

A. Yes, sir (taking large blotter).

Q. Now, I show you a black blot, with the words marked "dredge 'Chinook.'" It isn't intended, Captain, that this is any particular scale or anything. It is just to show position. And I place the dredge "Chinook" in front of you, as if the blotter that you hold in your hand were the channel of the river at the place.

A. Yes, sir.

Q. Your right hand being that part near the northward part of the channel, where the bow of the "Chinook" was?

A. Yes, sir.

Q. And her stern up across the river, as you fix it, and the river runs from you to me.

A. Yes, sir.

Q. We are going down towards the bar?

A. All right.

Q. As I understand you. I hand you a green block, and as I understand you, the "Thode Fagelund" was somewhere in that position, about. We will say that is fifty feet off the end of this thing, off the end of the stern was the bow of the "Thode Fagelund"—off the end of the stern of the dredge

(Testimony of Captain I. Turppa.)

"Chinook." (Arranging blocks.) And when you came in the pilot house, the bow of the "Thielbek" was in the bow of the "Thode Fageland" in that manner. Showing you a red block about fifty feet off the end of the dredge, and the "Ocklahama," another little short block that I show you, and lying in between the black block and the other red one, being marked the "Ocklahama," right off, as I understand you to say, about one hundred feet down from the bows of these two steamers, and from the end of the dredge, the head line still fast. Is that right?

A. If you will let me fix them, I will fix them right.

Q. I will ask you if that is about what you saw from the pilot house?

A. I will place them.

Q. That is what I want you to do.

A. All right (arranging blocks). Now, that is about the position we were in when I came up in the pilot house.

COURT: Which is the Astoria side?

A. (Indicating) This is the Astoria side.

Q. The left-hand is the Astoria side.

COURT: I thought you were coming around this way (indicating).

A. (Indicating) No, we came right up this direction. The river runs up this way.

Q. Between Bristol and the witness?

A. Yes.

(Testimony of Captain I. Turppa.)

Q. And you were going up?

A. Our head line still held, and our stern was out quite a way. It was so far that I couldn't, at this time, get from the "Ocklahama" on the ship "Thielbek." We were probably about ten feet away from the side of the "Thielbek."

Q. But still holding it with the head line?

A. Still holding it with the head line.

Mr. BRISTOL: Now, then, witness places the "Ocklahama" in a position about ten feet off at her bow, adjoining the waist of the "Thielbek" on her port side, and about twenty-five or thirty feet off the beam of the "Ocklahama" to the port quarter of the "Thielbek."

WITNESS: But looking upstream.

Mr. BRISTOL: But heading upstream towards the line of the "Chinook."

COURT: Where was the "Thode Fagelund" coming?

A. (Indicating) Coming from this direction, just making a turn, as near as I could imagine.

COURT: Coming around this side of the "Chinook"?

A. Yes, she had been anchored way up here, and making this turn.

Mr. BRISTOL: Witness places the dredge "Chinook" athwart the channel of the stream, with the stern, but a short distance inclined upward, and the green block, representing the "Thode Fagelund,"

(Testimony of Captain I. Turppa.)

heading somewhat across the stream a little north of west.

Mr. MINOR: I don't know whether that direction is right, or not.

Mr. BRISTOL: Get your map and look at it. I didn't interfere with you. I am trying to be courteous about it.

COURT: Go ahead. I don't think you ought to state in the record your interpretation of what this diagram shows.

Q. Now, can you give me about the direction—let's put it this way if these gentlemen object to that. You know the compass directions of the river, don't you?

A. Well, no, because there is not two compasses are hardly ever just the same.

Q. I don't mean that. You misunderstand me. That is true, but that isn't what I mean. I mean so as to get the relative positions of these ships. When you saw them fastened together, could you give me about the heading course of the "Thielbek" upstream, and the heading course of the "Thode Fagelund" downstream? Could you give me about those courses?

A. I can say the "Thode Fagelund" was probably headed towards the west in some direction, but I won't say—

Q. And the other boat, the "Thielbek"—

A. (Continuing) But I won't say positively the position or compass course.

(Testimony of Captain I. Turppa.)

Q. No, I don't want you to, but it was somewhat a little north of west. Now, the "Thielbek," on the other hand, was a little east of northeast, wasn't it?

A. About east, anyway.

Q. Now, that course coming up the river, calling your attention to it just a moment, coming up the river from down here at this anchorage, you understand down there, at that post light you marked on the map, and opposite the oil tank, you came up around Smith's Point and got in by the Standard Oil dock; coming this way from the Standard Oil dock, that is the direction, in front of the O. R. & N. dock, can you give me that river course you usually steer on down in there?

A. Steer on down in there?

Q. East northeast, isn't it?

A. If I am steering a boat alone, without a tow, my compass course is liable to be a point or a point and a half different than when I have a ship in tow; an iron ship will vary some. It has an attraction for the compass, so you can't steer a ship with our regular compass course.

Q. You steer by the range lights?

A. Yes, we can steady them on them a little bit some times, in case a little fog or smoke comes along, and get some idea, but not an accurate course with a ship in tow. I can give you just an exact course that we steer, a light boat; if you want that, I can give it to you.

(Testimony of Captain I. Turppa.)

Q. No, Captain, all I want—when you came on deck, and looked out of your pilot house—

A. I won't say whether—

Q. With the "Ocklahama" headed this way, was the "Thielbek"—what I want to get at is this: Here is what I want: Tell me the facts. Was the "Thielbek" headed in such a way as to be exactly in mid-channel, or was she headed somewhat northeasterly?

A. The "Thielbek" was in that shape (illustrating).

Q. Now, applying that. Here is the reduced plat of the river at that point and place, having on it the delineation north and south line, and here is the Callendar dock and the O. R. & N. dock.

A. Yes.

Q. And showing you that little plat.

A. Here is the buoy.

Q. The dredge anchored across here (pointing to Buoy No. 13)?

A. Yes, sir.

Q. Would you mind for me, so I can get these postions we have been talking about, with these blocks and blotters—will you take the pencil, please, and mark opposite the Callender dock, or the O. R. & N. dock, where you were, the dredge was, and where the two boats came together, and where the "Ocklahama" was, just as you have explained to Mr. Minor, as near as you can. This is up river; this is downstream (indicating).

(Testimony of Captain I. Turppa.)

A. My opinion is we were above the Callender dock. We were almost abreast the O. R. & N. dock.

Q. The O. R. & N. dock is shown on this, right here?

A. Yes, sir.

Q. In that little long streak there; the O. R. & N. dock is marked there (indicating).

A. Well, we will say the "Chinook" was here—well, here, I put the "Chinook"—well, that goes a little bit too close now, and it isn't very good yet, but the "Thode Fagelund" was in that shape (indicating and marking).

Q. Now, the "Ocklahama" would be right there?

A. Yes, sir; of course this really shows too close (witness marks). That shows really too close. You see, they are right together there.

Q. You say fifty feet in that space?

A. Yes, sir.

Mr. BRISTOL: I will just mark these. Witness marks on paper, Line A for the "Chinook," Line B for the "Thielbek."

COURT: That is reduced.

Mr. BRISTOL: This is a reduction of that map, your Honor, exactly. Line C for the "Thode," and Line D for the "Ocklahama," at the time he came into the pilot house, after the "Thielbek" and the "Thode" were together.

COURT: Mark that so it will show it is the Captain's.

(Testimony of Captain I. Turppa.)

Map offered in evidence and marked "Captain Turppa—Libellant's Exhibit 1."

Q. Now, when you went up to this pilot house?

A. Yes, sir.

Q. And saw this situation that you have described there for me, what were the first things that Mr. Pease said to you, and what was the first thing you said to him?

A. I would not like to copy the words now, because I haven't it just exactly.

Q. Well, in substance and effect.

Mr. MINOR: This isn't cross examination. I didn't ask about a conversation.

Mr. BRISTOL: Mr. Erskine Wood drew out that Mr. Pease was in the pilot house.

Mr. MINOR: Go ahead. I didn't ask about a conversation.

A. Yes, Mr. Pease was in the pilot house. I don't remember what the first words were.

Q. What did you say to him, in substance and effect?

A. Well, I think we spoke about we were going—we will ask them—we asked the "Thode Fagelund" if they needed any assistance; that we give assistance there to the "Thielbek" or the "Thode Fagelund." The first thing we done, as near as my recollection serves me now. We go to find out if we could do any—be any assistance to him.

Q. That was the very first thing that was said between you, was it?

(Testimony of Captain I. Turppa.)

A. Yes, just about the first. I don't remember as anything else said before that.

Q. You didn't ask Pease when you came into the pilot house what had happened, or anything of that kind?

A. Not that I can recall of.

Q. Nor Pease didn't say anything to you, did he, about what had happened?

A. Not that I could remember.

Q. It was quite—you thought it was quite natural for you to go into the pilot house, and the first thing to do was that you would naturally and under those circumstances, ask whether you could assist the other fellow?

A. Yes, sir.

Q. Now, what did you do in pursuance of that conversation?

A. Well, the reply was that they were all right.

Q. No, but what did you do? You didn't ask the "Thode Fagelund" from here down there, 100 feet off the "Thielbek"—

A. I took a megaphone, and hollered to him, and if I remember right, we ran right close.

Q. You ran right up close along the "Thode Fagelund"?

A. Yes, right up close to it.

Q. And you took the wheel yourself, didn't you?

A. No, sir.

Q. Didn't you?

A. No, sir.

(Testimony of Captain I. Turppa.)

Q. Was Mr. Pease in the pilot house?

A. Mr. Pease handled the boat.

Q. Going up to the "Thode Fagelund"?

A. Yes, sir.

Q. And in backing down afterwards?

A. Yes, sir.

Q. You didn't take the wheel at all?

A. No, sir; Mr. Pease handled the boat. I was in the pilot house close by him. He handled the boat.

Q. And nothing was said between you about the matter of the collision?

A. Not that I can remember of.

Q. Well, if there had been said, you would remember it, wouldn't you?

A. I presume I would. I got a fairly good memory.

Q. And so you tell me that, as a matter of fact you didn't talk about the collision between you?

A. As near as I could remember, wasn't much said about what happened.

Q. Now, the place where you found the "Thielbek" is down there between the post red light and the old fish dock; that is the usual anchorage for vessels inward bound, for towage to Portland?

A. Yes, nearly all of them have to go to quarantine; at least foreign vessels.

Q. And I understand you to say that the usual towing speed of a vessel as big as the "Thielbek" with the "Ocklahama" is twenty or thirty minutes

(Testimony of Captain I. Turppa.)

up abreast of Astoria, where you were at the time of this collision?

A. Yes, something like that.

Q. That is the usual towing speed; the usual towing speed with a ship like the "Thielbek" is anywhere from six to eight miles an hour?

A. Well, sometimes we don't go more than five miles. That just depends on the water and current.

Q. These conditions, so you are aware of it, as we understand it, these conditions that morning were said to be a flood tide, and as Bergmann explained it, he said about started up on flood?

A. Yes.

Q. Now, running up on the flood, the usual time at full speed, with tow, would take you abreast of the O. R. & N. dock in about twenty minutes?

A. Yes, but we hardly ever average eight miles an hour; with very few vessels we average eight miles an hour.

Q. How long is the "Ocklahama?"

A. 161 feet.

Q. 161 feet?

A. Yes, sir.

Q. That is, measured over the paddle box?

A. No.

Q. That is just the hull line?

A. Hull line.

Q. Now, her paddle box—161 feet hull line—her paddle box is twenty feet, you think?

A. Yes, all of that.

(Testimony of Captain I. Turppa.)

Q. Would it be more than twenty feet?

A. I won't say the length of her wheel arms or shaft.

Q. Who is the engineer?

A. Stayton.

Q. Was he on the trip that night?

A. No, he was off watch.

Q. Who was running? Second engineer?

A. Second engineer.

Q. What was his name?

A. Eliassen.

Q. Pease was at the wheel?

A. Yes, sir.

Q. Eliassen has been with her long enough, he will know the distance of the wheel?

A. Yes.

Q. Or Stayton?

A. Yes, either one of them.

Q. Is it more or under the 20 feet?

A. I think more than 20 feet from the end of the hull.

Q. To the end of the arms that support the house?

A. To the fan tail.

Q. To the fan tail?

A. Yes, I think it is.

Q. Will it be right to say 25 feet?

A. If you like; it will be approximate.

Q. No, I don't want it as I like. What I am

(Testimony of Captain I. Turppa.)

trying to arrive at, is the total length of the "Ocklahoma" from her stem to the end of the fan tail.

A. I won't state that just exactly.

Q. Well, 161 feet on the hull line. How high is her wheel house? So as to remind you what I am driving at, how much do you allow going underneath the draws of these bridges here? Do you allow fifty or sixty feet, or whatever it is, to the top of her hog chains and staff?

A. That would be fifty-three feet. Our height going under bridges.

Q. Fifty-three feet under bridges?

A. Yes, sir.

Q. How much of that height above the water line is it to where you would stand in your pilot house, approximately?

A. I measured that once, but—

Q. I know you did.

A. I don't like to say just now.

Q. Your texas is about—your texas floor is about ten or twelve feet below the pilot house wheel floor?

A. Yes, sir.

Q. Then you go down on another series of decks to get into the stateroom deck?

A. Yes, sir.

Q. About five or six or eight feet. Then you go down another series of decks; that gets you to the main deck proper?

A. Yes, sir.

(Testimony of Captain I. Turppa.)

Q. The cargo deck?

A. Yes, sir.

Q. Now, you see the Court doesn't know these things like we do, so I am trying to get you to explain to show where you were in this wheel house, and where you saw those things. You were up here inside of this house place, that is called the pilot house, right up in the front of your steamer, and about how far back from her bow? In that distance in length of 161 feet, in the hull, how far is that pilot house back from her bow, her stem, more correctly?

A. I won't say just exactly now.

Q. Well, it's fifty feet, ain't it?

A. Might be.

Q. You think it more or less?

A. Less, if anything.

Q. I think it is too. I think it is in the neighborhood of about forty-two feet. However, the screens, the screens are board—

A. For the side lights?

Q. For the side lights. On the red side they are made with an arrangement that runs along the steamer's sides lengthwise for three or four feet, and a little bracket behind, and the lamps sit there?

A. Yes, sir.

Q. That would be for the red light?

A. Yes, sir.

Q. On the port side?

A. On the port side.

(Testimony of Captain I. Turppa.)

Q. How far are those screens high or low above your texas deck, where you sleep?

A. I think about eighteen inches from the deck.

Q. On the very same deck, aren't they?

A. On the hurricane deck.

Q. Now, your pilot house floor is quite considerable distance above that yet, isn't it?

A. Yes.

Q. So that these screen lights, that is, your starboard and port light, in this height of fifty-three feet clearance above the water would be in the neighborhood of how far above your water line in height?

A. Neighborhood of twenty-five feet.

Q. Between twenty-five and thirty feet. Wouldn't be over thirty feet and not less than twenty-five feet, would they?

A. No, sir.

Q. The "Thielbek" was running light, wasn't she, was in ballast?

A. The "Thielbek" was in ballast.

Q. You had met Bergmann before?

A. I had met him before when he was here, but I wasn't acquainted with him.

Q. Now, when you went aboard—as I understand it, you came down with the Andy Mahoney, or something, that is Saturday night?

A. Yes, sir.

Q. You brought her from Prescott?

A. Yes, sir.

(Testimony of Captain I. Turppa.)

Q. And anchored her up at Tongue Point?

A. Yes, sir.

Q. And you came down to the Port of Portland dock?

A. Yes, sir.

Q. And you made some report, and went down to get the "Thielbek"?

A. Yes, sir.

Q. At the time you did that, the dredge "Chinook" was in the river here, and the "Thode Fagelund" too?

A. Yes, sir.

Q. Then you went on down to this anchorage, and it was about 10:30 when you got down to the "Thielbek"?

A. Yes, sir.

Q. Then you went aboard the "Thielbek" and gave some directions as to what was to be done?

A. I didn't go aboard the "Thielbek." I talked to Captain Bergmann from the "Ocklahama's" pilot house.

Q. You did?

A. Yes, sir.

Q. You didn't go over on the "Thielbek"?

A. No, sir, not that evening, that I have any recollection of.

Q. You didn't go aboard then, until the next morning after the collision.

A. The next morning after the collision.

Q. That being the case, then, and you being in

(Testimony of Captain I. Turppa.)

the pilot house, will you please tell the Court whether your screen lights, meaning thereby your port and starboard lights, were above the decks of the "Thielbek"?

A. I am satisfied, in fact, I know that the starboard light, the screen—we have a spare one with a lamp in it, an electric light that was put on the rigging of the "Thielbek" abreast of our pilot house, and above her deck, and the red light we carried on the "Ocklahama" at its regular place, usual place.

Q. So that you placed this green light with the cord in it about the relative height and position on the shroud rigging of the "Thielbek," and an equivalent height to the port light on your own boat?

A. Her light probably was a little bit higher.

Q. But you had plain vision over the entire deck of the ship, didn't you, from where those lights were?

A. Fairly good. We had fairly good vision over the vessel.

Q. There are some photographs shown here merely as exemplars of the boat, and one of the "Thielbek" shows her bow. This is Photo B of the "Thielbek," showing her bow. Now, that would appear to a stranger to stand pretty high out of the water. You see what I mean?

A. Yes, sir.

Q. What I am trying to arrive at from you—Mr. Minor having asked you how you set these lights—is whether or not this light back here in the

(Testimony of Captain I. Turppa.)

shrouds that you set opposite your wheel house on the starboard side of the "Thielbek," would be high enough so it could readily be seen by a navigator coming in the opposite direction in the river, and so that your red light would be seen if you happened to move your ship. In other words, illustrating with these red blocks, you could see, if your boat turned this way far enough to get a glimpse of it, you could still see across the bow of the "Thielbek," and get a glimpse of your red light, if he was in that position?

A. No.

Q. Why not?

A. Because there was a screen, and that only shows—

Q. I know, it only shows eight points abaft the beam, but it will show straight forward.

A. Straight ahead.

Q. It won't show over this way, will it (illustrating)?

A. No, sir.

Q. Couldn't see any red light in that shape, could you?

A. No, sir, don't show that way.

Q. In other words, it would be absolutely impossible, wouldn't it, where those lights are placed, for a man to say that he stood in any position except straight dead ahead, and see the red lights of that boat, wouldn't it?

A. That is all he is supposed to see.

(Testimony of Captain I. Turppa.)

Q. Now, the green light you placed here in the shroud—

A. Yes, sir.

Q. Was on this starboard side of the "Thielbek," opposite your pilot house?

A. Yes, sir.

Q. And relatively the same distance in height as your red light, maybe a little higher?

A. I think the green light was higher, probably.

Q. How far was it, Captain, from your screen bracket over to where you carried that light? How many feet of cord did you have put out?

A. I don't remember just about the length of our cord. I think it is—well, it is probably 50 feet, the cord is.

Q. 50 feet?

A. Yes, somewheres in the neighborhood of that, but that don't—

Q. Now, listen, Captain, the reason I am going into this particularly with you is something you don't know, and I want to tell you. The witnesses on the ship, on the "Thielbek," they have told us in testimony already taken about what they did with those lights—See?

A. Yes, sir.

Q. And they say that you took this cord, that is not you but one of your men, took this cord from the "Ocklahama" and took it clear to forward here and put it in the house—you know these little pilot houses built on foreign ships to put the lights in,

(Testimony of Captain I. Turppa.)

little screen houses, that the oil lamp goes through the bottom. They say your man took that cord and went clear up over that ship to the starboard bow and set that green light. I want to know if you saw that done.

Mr. WOOD: Set the green light where?

A. I think that is a mistake.

Mr. MINOR: This witness says he didn't see the lights put out; that he had a talk about putting them out.

A. The lights were not put out before I went to bed.

Mr. BRISTOL: Very well; he knows where he directed them to be put.

Mr. MINOR: That may be.

Mr. BRISTOL: He knows whether he directed them to be put in the shrouds, when the sailor says he put them up here. There is a hiatus there.

Mr. MINOR: You can ask about where he told them but not about where they put them, for he didn't see the lights put out.

Q. This cord is only fifty feet long?

A. Something like that; ain't any more than that.

Q. Not any more than fifty feet long?

A. No.

Q. You were fastened, your "Ocklahama," to the "Thielbek"—

A. Yes, sir.

Q. (Continuing) On the port quarter, which